THE HISTORY OF TIMBER ROYALTIES IN BRITISH COLUMBIA

A factual paper prepared for the Ministry of Forests by

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The opinions expressed in this paper are solely those of the author. Any errors present in this paper are the sole responsibility of the same.

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THE HISTORY OF TIMBER ROYALTIES IN BRITISH COLUMBIA

I. Introduction

The purpose of this paper is to provide a factual account of the history of timber royalties in British Columbia. This paper summarizes the main events and arguments made concerning timber royalties in British Columbia since they were first levied in 1879. It is not the intention of this paper to provide an exhaustive history of timber royalties in British Columbia or to provide an interpretation or conclusions concerning the significance of past events.

This history is prefaced with a definition of the term royalty, followed by an overview of the chronological history of timber royalties, a summary of the historical debate and a summary of the arguments and facts underlying the central issues in the royalty debate.

The history of timber royalties in an expanded chronological format is available in Appendix A. Appendix B describes the origins of the various forms of royalty bearing tenures. Appendix A is a collection of relevant quotations, excerpts and facts concerning timber royalties, arranged according to year. These are the raw notes upon which this paper is based. Although the appendix is not an exhaustive accounting of all references made to the royalty issue in the past, it is believed to be highly representative of the positions taken and arguments made concerning royalties from the first time they were levied. This paper is thoroughly footnoted with references to the appendix as the source of its observations. The reader is encouraged to consult this resource in order to read the arguments and positions as they were originally presented.

II. Royalty: A definition

For the purpose of this paper, royalty is defined as:

> A share of the product or profit of property reserved by the owner when the property is sold, leased, or used or payment to the owner for permitting another to exploit, use, or market such property (as natural resources, patents, or copyrights) which is often subject to depletion with use.[1]

This definition is very similar to that used by the 1974 Task Force on Crown Timber Disposal which describes royalty as a concept that "originated in British law as the

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[1] Webster's Third New International Dictionary of the English Language (Springfield Mass.: Merriam Webster , 1986), p. 1982. Legal definitions of royalty differ little from that of a conventional dictionary. The Mozley & Whiteley's Law Dictionary, 11th Edition (Toronto: Butterworth, 1993), p. 243, defines royalty as "A *pro rata* payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant or lease. The word is especially used in reference to mines, patents and copyrights."

share of natural resources reserved by and for the sovereign upon their exploitation, and in the course of history royalty has come to refer to a variety of Crown levies on both public and privately owned natural resources and, in addition, to devices by which private owners of other things ranging from mineral deposits to works of art and patents reserve for themselves a share in the value of their assets."[2]

The basic purpose of timber royalty has rarely been in dispute.[3] Historical debate concerns the level and form royalty should take. Was royalty, by definition, to remain one fixed rate forever or is it a reservation in the value of timber as it accrues? What share in the value of timber should be reserved for the Crown? These questions are at the centre of the historical debate over timber royalties. The history of this debate and other related issues is what follows.

III. A Chronology of the History of Timber Royalty

By 1907, the majority of royalty bearing tenures had ceased to be granted with the exception of grants of Crown land that were not chiefly valuable for timber. One can consider these tenures as belonging to one of three basic categories. The first are Crown granted lands, including Timber Berths and railway grants. The second form of royalty bearing tenures are timber leases which, for the purposes of this paper, include pulp leases, and the third, timber licences, of which the majority were initially granted as Special Timber Licences. For the most part, these tenures will be referred to as royalty bearing tenures, old temporary tenures or simply tenures.[4]

It was not until after these royalty bearing tenures ceased to be granted that royalty rates and the method by which they were calculated and collected came under serious scrutiny. The debate over royalties can be considered to have begun in 1907 with the first proposal to increase the royalty rates since they were instituted in 1888.[5] From 1907 onwards, there are a number of notable events or periods during which the majority of debate took place.

The 1909-1910 Royal Commission on Timber and Forestry saw the first major discussion of royalty.[6] The subsequent enactment of the Timber Royalty Act in 1914 launched the next period of intense discussion and debate which did not cease until a

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[2]Appendix A, 41k., p. 62. The definition of royalty used by 1974 Task Force on Crown Timber Disposal was questioned by at least one person. See Appendix A, 42a., p. 65; 42c., p. 66.

[3]Ibid. Chief Forester E.C. Manning argued vigorously during the 1930s that royalties were never intended as government revenue. Royalties were forest capital which should have been used to maintain productive forests. See Appendix A, 32a., p. 52. The definition of royalty appears only to have been controversial in terms of Crown granted lands (with one exception, see footnote 2). It was believed by industry and the 1956 Sloan Commission that royalty only applied to first growth timber. (See Appendix A, 35a., p. 53; 35b., p. 54; 36j., p. 57; 42a., p. 65; 42b., p. 66.

[4]For an account of how, when and why these various forms tenures were created refer to Appendix B, p. 80.

[5]Appendix A, 18c., p. 24.

[6]For references concerning Fulton Commission see Appendix A, 19a., p. 25 to 20o., p. 34.

new Timber Royalty Act was implemented in 1924.[7] Although royalty rates were a matter of concern throughout the Great Depression, little in the way of substantial discussion or change took place during this time.

It was not until 1956, with report of the Royal Commission on the Forest Resources of British Columbia, that there was a renewed interest in timber royalties. Even though the 1956 report of the Royal Commission is highly significant in what it says about royalties, it substantiated little if any fundamental change in the royalty system or in the basic positions taken by industry and government.[8]

The formation of the 1974 Task Force on Crown Timber Disposal, chaired by Dr. Peter H. Pearse, can be considered the next watershed in the history of timber royalties. Even though it only had six weeks to consider submissions and publish its findings, the Task Force provided the most thorough review of the royalty issue to date and is the greatest source of documented debate in regards to timber royalties in British Columbia (especially when one also includes the outpouring of reaction to the Task Force's Report).[9]

In 1976, the Royal Commission on Forest Resources, also chaired by Dr. Pearse, investigated a very limited part of the royalty issue as it pertained to Crown granted lands (excluding railway grants).[10] Since 1976, little substantial change or involved debate concerning royalties has occurred, that is, until May 1994 with a significant change not only in royalty rates but also in the manner in which they are calculated.[11]

IV. A Summary of the Historic Debate

To understand the issues surrounding timber royalties, it is useful to consider in synopsis the points-of-view that have been expressed by the forest industry and government over time. There are many opposing views that have, as of yet, not been reconciled to the satisfaction of one or, in some cases, both parties.

Historically, the positions taken by industry and Government have not been fully consistent. Within the forest industry and within the government there exists over time, and even within any one time period, a diversity of viewpoints. However, there are some basic points-of-view that can be attributed to a particular party without risking erroneous generalizations.

Excluded from this summary are the arguments supporting and opposing these particular positions or points-of-view. Such arguments, including those of various

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[7]For references concerning the Timber Royalty Acts see Appendix A, 23a., p. 35 to 26u., p. 50.

[8]For references from the Sloan Commission, 1956 see Appendix A, 35a., p. 53 to 36j., p. 57.

[9]For references concerning the Task Force on Crown Timber Disposal see Appendix A, 41a., p. 59 to 42l., p. 70.

[10]For references concerning the Pearse Commission, 1976 see Appendix A, 43a., p. 71 to 44c., p. 74.

[11]For information on the new method for calculating royalties see Appendix A, 48a., p. 77.

Royal Commissions and the 1974 Task Force on Crown Timber Disposal, are considered in a subsequent section of this paper. In that section, any significant divergence in argument or points-of-view within industry or within government will be noted.

Historically, the forest industry has advocated the adoption of a royalty system which was sensitive to the rise and fall of the market.[12] In this regard, they have opposed royalties charged at a flat rate, which is not responsive to market conditions. More specifically, they opposed a system which did not take into account rises in the cost of production.[13] This is not to say industry has never agreed to trying such systems, but rather, that their support for any such proposal has been short lived at best.[14] In addition, industry opposed royalty rate hikes that did not apply evenly to the whole spectrum of royalty bearing tenures.[15]

In the first half of this century, proposals basing royalty rates on a permanent formula had been received with a great deal of trepidation by members of the forest industry. Government proposed royalty formulae which linked royalty to either stumpage values or stumpage rates were consistently rejected by industry. The two issues upon which they were never able to agree with government were what share in the value of timber the government was entitled to and what legitimate deductible carrying costs could be claimed by industry.

There has been much confusion and debate regarding what constituted a fair share to be reserved for the Crown . Upon reviewing the statements by industry, it is difficult to ascertain whether the share they believed government was entitled to was a percentage (or portion) of the gross or net value of timber. The most frequent and unambiguous statements by industry appeared to advocate a government share of around 25 percent of the net value of timber. However, it is uncertain how industry intended to define and calculate net value.[16]

What industry believed to be legitimate carrying costs has been stated much more clearly. Industry consistently expressed the belief that any royalty system that was to be linked to stumpage values or was to be equivalent to the stumpage rates being charged on nonroyalty bearing tenures must account for industry's carrying costs. Royalty and stumpage rates should under no circumstances be considered as directly equivalent since there are carrying costs attributable to royalty bearing tenures that are not present for the other forms of timber tenure. These carrying costs, according to industry, included annual rental payments, fire protection costs, property tax, forest management costs, private purchase price of tenures and the accumulated interest on these carrying costs.[17]

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[12]Appendix A, 24a., p. 38; 26d., p. 44; 26s., p. 49.

[13]Appendix A, 19g., p. 26; 24a., p. 38; 26d., p. 44 .

[14]Appendix A, 26c., p. 44.

[15]Appendix A, 19m., p. 28.

[16]For the issue of what constitutes a fair share for the Crown see Appendix A, 25d., p. 40; 25f., p.41; 25h., p.42; 26f., p. 45; 26m., p. 47; 42e., p. 67; 43b. p. 72.

[17]For the issue of what constitutes legitimate carrying costs see Appendix A, 20i., p. 32; 25c., p. 39; 25d., p. 40; 25h., p. 42; 41a. & 41b., p. 59.; 41f., p. 60; 42d., p. 67; 42k., p. 70 to 43d., p. 72.

The industry maintained that the province should retain the right to change royalties but insisted that government must balance its option to increase royalty rates with the industry's need for investment stability.[18] Unpredictable royalty rate hikes were viewed by the industry as a serious hindrance to attracting capital investment. The industry's concern reflected the fact that there had not been, until 1994 at least, a royalty system based on a permanent, reproducible and mutually agreed upon formula. Instead, a system of arbitrarily fixed royalty rates had been the practice. Under such circumstances, the industry desired a royalty schedule that was at least fixed and predictable for a set period of years. Industry at the beginning of this century desired a fixed schedule for at least thirty years but have since been willing to accept royalty schedules fixed at much shorter intervals.[19]

The government has maintained the position throughout the history of timber royalties that it reserved the right to change royalty rates at any time.[20] With the exception of the unsuccessful negotiations to draft a royalty formula on which to base the 1924 Timber Royalty Act, the government refused to recognize as legitimately deductible carrying costs: annual rental payments, forest protection cost, property tax payments, private purchase cost of royalty bearing tenures or the accumulated interest on these costs.[21]

The government never opposed attempts to establish a royalty system that was sensitive to the rise and fall of the market and that was sensitive to increases in the costs of production. Since the failure of the 1914 Timber Royalty Act, proposals by the government favored establishing a permanent formula by which to fix royalty rates.[22] In the first half of this century, the government noted that there were practical limitations to the kind of formula that could be used, especially in determining market value. They believed that, ideally, the cost of production subtracted from the selling price should determine timber value. However, the Forest Branch at that time noted that such a calculation would require the audit of the books of every forest industry operation, a task beyond their capabilities.[23]

The Province maintained that royalty rates should reserve a reasonable share in the value of Crown timber including the increase in that value of timber over time. The proportion of a one-third share in the increment value was articulated by government, according to industry correspondence during the 1924 Timber Royalty negotiations.[24] Unfortunately, it is not clear how the term value was being defined

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[18]Appendix A, 20a. & 20b., p. 29.

[19]For references arguing for fixed royalty schedules etc. see Appendix A, 18c., p. 24; 19f., p. 26; 22c., p. 35; 25a., p. 39; 26e., p. 45; 26l., p. 47; 26q., p. 48.

[20]Appendix A, 4a., p. 17; 21a., p. 34; 23d., p. 37; 23e., p. 37; 26t., p. 50.

[21]For reference to the unsuccessful negotiations of 1924 Timber Royalty Act see Appendix A, 25e. p. 40; 25g., p. 41. For reference rejecting carrying charges see Appendix A, 20i., p. 32; 23c., p. 37; 26i., p. 46; 41o., p. 64; 41p. & 41q., p. 64.

[22]Appendix A, 19h., p. 27; 19j., p. 27; 23b., p. 36; 23e. & 23f., p. 37; 25b., p. 39; 25e., p. 40; 48a., p. 77.

[23]Appendix A, 23f., p. 37.

[24]Appendix A, 25h., p. 42; 25f., p. 41; 26j., p. 46. In one incident, Mr. Pattullo is reported to have said in telephone communications with the Timber Industries Council that in the rest of Canada a

and whether this definition remained consistent over time. In addition, there is no indication of what share in the original value of timber was intended to be reserved for the Crown.[25]

V. The Principal Issues

As can be gathered from the previous section, there were a few basic questions at the heart of the arguments over timber royalties. The first question, although not as controversial as the others, was whether or not the Crown had the right to raise royalty whenever and however it saw fit. Second was the matter of what constituted a reasonable share of the timber value that should be reserved for the Crown. Very closely related to this issue was the method by which that share was calculated. Concurrently, one needed to consider what if anything constituted a legitimate carrying cost that should be deducted from the royalty that was due the Crown; related to this was the question of whether or not there existed for the tenure holder any deductible investment equity.

The main historical arguments and facts regarding each issue will be summarized in turn. In summarizing these matters, one must consider that there exists other important sources of opinion regarding royalties which are independent of both the forest industry and government. Three Royal Commissions and one independent Task Force address the issues in various levels of detail. The opinions expressed in their reports have served to support and undermine the positions of both industry and government.

A. The Crown's Right to Increase Royalty

The Land Ordinance of 1865 introduced the system of granting the right to cut timber on Crown lands without alienation of the land itself. This legislation reserved the right for Government to raise charges at any time. The Land Ordinance stated that leases would be subject to "such rent, terms and provisions as shall seem expedient to the Governor." [26]

In 1910, the Fulton Commission observed that the majority of witnesses it heard agreed that Government had a right to a share of any increment in the value of timber and advocated that the Government retain the right to vary royalties.[27] The Fulton Commission also observed that the existence of renewable and transferable licences with an unfixed royalty was evidence of a policy of "the reservation of a share in the

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1/3 share was the prevailing rate. Thus, he thought that this proportion should be a fair one for British Columbia. See Appendix 26j, p. 46.

[25]Appendix A, 19i., p.27; 21a., p. 34; 22b., p. 35; 23d., p. 37; 25e., p. 40; 25f., p. 41; 25h., p. 42; 26j., p. 46; 26r., p. 49; 26t., p. 50.

[26]Appendix A, 4a., p. 17.

[27]Appendix A, 20a., p. 28; 20b., p. 29

increment value of timber as it shall accrue."[28] It did not in any way deter investors or operators, noted Fulton, despite the fact that it was known these new licences were subject to the alteration of either rental or royalty by the Government. It is implied, by Fulton at least, that the purchase of these licences indicated acceptance of the Government's right to increase royalty at any time. [29]

Fulton also argued that up to 1910, the Government had exercised and maintained its right to raise fees in order to collect its share in the value of timber by varying rental rates.[30] This contention by Fulton seems to reflect some confusion that existed in the early history of timber royalties as to the distinction between rental and royalty. Apparently either vehicle was considered a valid way to collect what essentially was the share of the timber resource reserved for the Crown. Even during the Fulton Commission hearings, it was stated on at least one occasion that royalty rates and rentals should be linked.[31] There is no evidence after 1910 that rental is used as a method to collect the government's share in the timber resources of the Province.

In a public speech in 1912, Premier Richard McBride affirmed the right of the Province to change royalty rates at any time:

> Under the special licence plan Parliament retains the power to increase both rental and royalty charges, so that as the timber values grow, so does the interest in the timber retained by the Province increase. The people are guaranteed a fair share in the rise in values, the unearned increment.[32]

Shortly thereafter, a brief history of timber royalties by the Forest Branch affirmed that "in issuing...timber cutting licences it was expressly provided that the royalty to be paid when the logs were cut was not to have any fixed amount, but was subject to increase by the legislature...."[33] Ten years later, the comments of the Forest Branch regarding the Timber Royalty Act of 1924 also implied that the Government in no way renounced its right to increase royalties even though it had agreed to a ten year timber royalty schedule.[34]

In 1974, the Task Force on Crown Timber Disposal said royalties should reflect a consistent share in the varying unearned increment of public forest values, thus affirming the right of Government to increase royalties as the value of the natural resource increased.[35]

Arguments against royalty increases fell short of denying the Government's right to raise royalties. Instead, industry argued that at the very least, the unrestrained exercise of that right would and has deterred investment in the Province's forest

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[28]Appendix A, 20e., p. 30.
[29]Appendix A, 20f., p. 31.
[30]Appendix A, 20g., p. 31.
[31]Appendix A, 19c., p. 25.
[32]Appendix A, 21a., p. 34.
[33]Appendix A, 23a., p. 35.
[34]Appendix A, 26t., p. 49.
[35]Appendix A, 41q., p. 64.

industry.[36] However, the majority of critique of any proposal to increase royalties has been based on whether the right to increase timber royalties is unlimited. In 1974, when the Task Force on Crown Timber Disposal recommended that royalty rates be increased to 100 percent of appraised stumpage value, it was vehemently opposed as an improper use of the Government's right to increase royalty rates.

Among the reasons cited were 45 years of government policy that had kept royalty low, morally restricting the right of Government to raise royalty to whatever level it desired, especially to the level of anything approaching 100 percent of appraised stumpage.[37] Such an increase would undo an historical precedent of charging royalty at a rate substantially lower than stumpage.[38] A review of the Task Force's report *Crown Charges for Early Timber Rights* questioned the morality of massive increases in royalty rates solely based on the Government's legal right to increase royalty rates, especially since "only eight changes in royalties were made between 1914 and 1973, and no change was made between approximately 1948 and 1968. Whereas royalties were in excess of 40 percent of appraised values up to about 1935, they were closer to only 20 percent of value from 1950 to 1970. A neutral observer could validly infer that the real intent of government has been a massive transfer of public equity into private lands." [39]

However, the relationship between royalty and stumpage, in fact, appears to have had no consistency over time. In its 1975 brief to the Royal Commission on Forest Resources, MacMillan and Bloedel observed that royalty as a percentage of stumpage had fluctuated widely in a period of just five years from rates that were "arguably too low" to a level almost equal that of stumpage in 1975, "arguably too high."[40] Between 1979 and 1989, royalty rates in the Vancouver region ranged any where from a low of 8 percent of stumpage to a high of 88 percent.[41]

Arguing in a different vein, the Association of British Columbia Foresters believed attempts to raise royalty to the extent proposed by the 1974 Task Force imposes a penalty on good forest management. A large hike in royalties did "not inspire the confidence of industry necessary to promote good forest policy and practices...."[42]

B. The Share of the Timber Value Reserved for the Crown

What share of the value of timber shall be reserved for the Crown has been a particularly divisive issue. It is not clear at the inception of royalties what portion of

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[36]Appendix A, 26k., p. 46; 26l., p. 47.

[37]Appendix A, 42d., p. 67.

[38]Appendix A, 42f., p.68.

[39]Appendix A, 42i., p. 69.

[40]Appendix A, 43b., p. 72

[41]Appendix A, 47a., p. 76. This citation is a chart comparing the stumpage and royalty rates from 1979 to 1989.

[42]Appendix A, 42g., p. 68.

the province's timber value was intended to be reserved. Royalties when first introduced were 50 cents per thousand feet (Mfbm) on leases (of which half was refundable upon export of a manufactured product) while royalty on Crown granted land was 25 cents per Mfbm.[43] Whether these rates were set to meet some revenue target or recoup a particular share in the market value of lumber is not stated.

Testimony before the Fulton Commission on this subject was quite vague. The most telling statement by the Chief Timber Inspector was only that royalty rates were "as low as the royalty in most other countries."[44] Another Provincial Timber Inspector merely stated that the Province is entitled to a "reasonable proportion" of the increase in timber value.[45] However, it is known that a 1913 proposal by the Minister of Lands to increase royalties from 50 cents to one dollar would have reserved for the Province a one-third share in the increased value of timber.[46] In addition, it is known that the 1914 Timber Royalty Act reserved for the Province 25 percent of any increase in value of lumber over $18.00 per Mfbm.[47]

In the negotiations leading up to the 1924 Timber Royalty Act, the Lands Department observed that royalty had varied between one-half and one-third of stumpage value. In addition, royalty at one-third of the stumpage value was also the going rate in other provinces. Thus, Government maintained, in its negotiations at least, that its share should be one-third.[48]

In contrast, the 1924 timber royalty formula suggested by industry entitled Government to 25 percent of any increment over and above an arbitrarily established average stumpage value of $2.00. Furthermore, this proposal would be contingent upon the recognition of the private purchase price of timber licences as a legitimate cost factor to be calculated into the formula.[49] Industry argued that if the Government would take "one-third of the value of his property...[it] will not appeal to an investor on the same ratio that timberland does in California, Oregon and Washington...."[50]

Opinions of the independent inquiries into royalty rates also differed radically in what they perceive as a fair share to be reserved for the Crown. The 1956 Royal Commission, chaired by Chief Justice Sloan, observed that royalty ranged from 20 to 30 percent of stumpage rates in 1948 and 1955 and thus suggested for the purposes of negotiation a base formula in reasonable proximity to 20 percent of stumpage rates.[51] Industry has since supported this ratio in at least one brief to the 1976 Royal Commission on Forest Resources.[52]

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[43]Appendix A, 7a. & 8a., p.18.

[44]Appendix A, 19b., p. 25.

[45]Appendix A, 19i., p. 27.

[46]Appendix A, 22b., p. 35.

[47]Appendix A, 23b., p. 36.

[48]Appendix A, 25e., p. 40; 26j., p. 46.

[49]Appendix A, 25d., p. 40. A discussion of carrying costs is covered in section C.

[50]Appendix A, 25h., p. 42.

[51]Appendix A, 36i., p. 57.

[52]Appendix A, 43b., p. 72

In 1974, the Task Force on Crown Timber Disposal, chaired by Dr. Pearse, suggested a royalty formula that approximated 100 percent of stumpage rates, a figure that had not been even closely approached by any previous proposal.[53] This recommendation was seen by Professor Harry G. Smith of the UBC Faculty of Forestry as ignoring the proper definition of royalty. Smith quoted Faculty of Forestry Dean, Lowell Besley, that "under its lease and licence system, the Province did not sell its timber outright, but reserved part ownership in this timber until such time as it was cut. It made this same reservation with respect to timber cut on Crown-granted timberland which the owner acquired after 1887." Smith cautioned that "part ownership is seldom changed easily to 100 percent ownership which would be the result of implementation of [the Task Force's] conclusions regarding assessment of royalty."[54] Industry members agreed, equating such a royalty hike to expropriation.[55]

C. The Methods of Calculating and Levying Royalty

Initially, royalty was levied as a flat rate that did not distinguish between species or grades. The arguments for this system were that royalties fixed in dollars per unit of wood were easy to administer because they required only a scale of the timber harvested and no information of the forest from which it was harvested. Neither was information required from the industry as to the costs incurred in converting the timber into lumber. However, the disadvantage of this system was that it implied all timber was of equal value, which encouraged loggers to take only the best timber.[56] Such a royalty system was also seen as unfair by industry owing to the variable value of stumpage over the province due to different grades or species present from location to location and because of differences in logging and transportation costs.[57] A further disadvantage of a flat rate royalty as viewed by industry was that it tended to bear more heavily during seasons of low prices than when the prices were high.[58]

The 1914 Timber Royalty Act established an "entirely new" royalty system based on the average selling price of lumber. A base rate was established over which the Government would collect a percentage of the increase in value.[59] The average selling price of lumber was, in essence, used as a barometer of stumpage value instead of using a system that calculated actual timber value by finding the difference between selling price and cost of manufacture. A system based on the average selling price of lumber, at least in the early half of this century, was considered as complex a formula that the capacity of the Forest Branch could allow.[60] The forest industry saw the

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[53]Appendix A, 41r., p. 65.
[54]Appendix A, 42a., p. 65.
[55]Appendix A, 42h., p. 68; 43a., p. 71.
[56]Appendix A, 41n. p. 63.
[57]Appendix A, 19e., p. 26.
[58]Appendix A, 19g., p. 26.
[59]Appendix A, 23b., p. 36.
[60]Appendix A, 23f., p. 37.

principal weakness of this system as its inability to take into account increases in the costs of production.[61] The seriousness of these flaws were compounded when the fee schedule was fixed for a long period of time.[62]

In reaction to attempts to raise royalties in 1908, the forest industry demanded an environment of investment stability. The industry needed to know in advance what its operating costs would be. They believed this could be accomplished by using a fixed royalty schedule for five or ten year periods.[63] After the failure of the 1914 Timber Royalty Act, the Timber Industries Council lobbied once again for a fixed scale of charges, this time for a term of thirty years in order to re-establish a stable investment climate. It was argued that such a royalty system would attain greater revenue from the resulting increased investment than the formula behind the 1914 Timber Royalty Act.[64] When no agreement was reached on a royalty formula, the Government partly conceded to the industry's desire for a fixed schedule of royalties but only for a ten year period. Such schedules became the practice for decades thereafter. Despite being fixed for multi-year periods, these schedules had to be revised almost yearly during the depression era to reflect the financial markets.[65]

In 1956, Chief Justice Sloan found no evidence as to the adequacy of the present system of arbitrarily fixed royalty schedules. Sloan recalled that "the terms of the licences at the time of acquisition provided that the rates should not be fixed, but adjustable in accordance with values at the time of cutting."[66] Pointing to the developments in timber disposal policy affecting timber sales and management licences, Sloan observed that changes in original stumpage rates had been provided for by means of a formula. He concluded that since timber sale stumpage rates themselves take into account "changing conditions affecting values and costs of production and are a very large part of the standing-timber market" a royalty formula should be linked to them."[67] "The objective should be to establish a formula for royalty adjustable in accordance with the broad economic fluctuations...."[68]

Similarly, the Task Force on Crown Timber disposal was critical of royalties in the form of dollars per unit harvested. The Task Force observed that "a fixed levy per unit of wood harvested from different tracts of lands will extract an inconsistent fraction of the net value of timber. Even if royalty rates were fixed at a level that would extract the full net value of harvested timber in a given category on the average, all the timber above average would be underpriced and operators would incur a loss on the other half (and hence have no financial incentive to remove it). Apart from its obvious implications for efficient forest utilization, the system creates inequities among

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[61] Appendix A, 26d., p. 44.

[62] Appendix A, 26s., p. 49.

[63] Appendix A, 18c., p. 24. For demands for a fixed royalty schedule also see Appendix A, 26e., p. 45; 26l., p. 47.

[64] Appendix A, 25a., p. 39.

[65] Appendix A, 29a., 30a., p. 41; 31a., p. 52; 33a., p. 53.

[66] Appendix A, 36d., p. 55.

[67] Appendix A, 36d., p. 55.

[68] Appendix A, 36g., p. 56.

operators on forest stands of different quality..... Because timber values and harvesting costs change constantly royalties fixed in dollars per unit harvested cannot be expected to appropriate a constant share of the net resource value unless they are continuously adjusted."[69]

Much like Sloan, Pearse recommended a royalty formula linked to stumpage rates although at a much higher percentage. Neither recommendation for some sort of reproducible formula linked to stumpage rates was ever implemented.

D. Carrying Costs and Accumulated Equity

Whether or not tenure holders could claim carrying charges as a legitimate cost and whether they accumulated any equity in their tenure over time were the most contentious issues. They became the central questions in any discussion regarding changes to timber royalties.

Fulton denied the claim by lease holders who had paid an annual rent for a period of up to twenty or thirty years that these payments should be considered as an investment in the tenure. Fulton argued that:

> [T]he lessee had received full value for the rental paid by him;...annual rental must be viewed...as conferring a mere right or option to cut timber during that one year and the fact that the lessee may have paid rentals for thirty years does not confer on him any higher rights than those he had after the payment of the first year's rental.[70]

In 1914, the Government concurred with Fulton's conclusion stating that the Province "handed over merely the cutting rights. In return licensees were required to pay only annual interest on the value of the timber reserved for them, which should be paid for when it was cut."[71]

Many industry members continued to contend that licensed timber was private property for which timber holders had often paid a substantial price in private transactions over and above annual rental fees. With such large investments sunk into their holdings, licensees found it unacceptable, at the time of cutting, to have to purchase from the government in the form of royalty, timber which they already regarded as their own.[72] In the negotiations regarding the 1924 Timber Royalty Act, industry demanded recognition of the private purchase price of timber licences as a legitimate cost factor in the determination of a royalty formula.[73] The most the Government was prepared to offer was recognition of rental and forest protection tax as

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[69]Appendix A, 41n., p. 63.
[70]Appendix A, 20i., p. 32.
[71]Appendix A, 23c., p. 37.
[72]Appendix A, 25c., p. 39.
[73]Appendix A, 25d., p. 39.

legitimate costs and acknowledgment of the private purchase price of licensed timber up to 50 cents per Mfbm as a legitimate cost to be written off stumpage value.[74]

After failing to enact a new Timber Royalty Act in 1923, the Government in subsequent negotiations refused to offset the cost of speculation against the value of timber. Premier Oliver gave a stern warning to timber holders:

> [A]re the timber holders placing that speculative value, which they have probably paid to obtain the possession of these timber licences--are they placing that as an offset against the cost of production? Because if you are, I want to point out to you that the...people of the Province, the original owners of the timber, (have) got no interest in that speculative value as it passed form one speculator to another....[75]

The 1956 report of the Royal Commission relating to the Forest Resources of British Columbia disagreed with the Government's refusal to recognize accumulated carrying costs. Sloan argued that:

> [T]he Crown has had the benefit of these sums, and it would be manifestly unfair to disregard them in establishing a royalty rate today comparable to stumpage payable on present timber sales which have contributed nothing to the Treasury prior to sale. Many present licence-holders have paid much more than the sum of these accumulations for their timber which, through the fifty years, has passed down a chain of owners. Such transactions were affected by many factors, such as the relative necessities of the then owners; the purpose, whether for immediate cutting or as a reserve to secure future supply for some large conversion plant and the economic conditions at the time of transfer, including the vulnerability of this class of tenure to increases in rates of royalty. Nor can the risks involved in holding vulnerable property for half a century be ignored. Through the years thousands of temporary tenures have reverted to the Crown after years of payments without any cutting return to the investors.[76]

Thus, when comparing royalty rates to current stumpage rates, Sloan said:

> [It] is logical that as the years passed, and the payments to the Crown accumulated, the percentage relationship of royalty to current stumpage rates should diminish. It represents the unpaid balance of the original agreement.[77]

The 1974 Task Force on Crown Timber Disposal elicited the fullest articulation by industry in regards to the need to recognize carrying charges and accumulated equity. They argued that the acquisition of timber licences and berths represented a substantial investment. Since acquiring this investment they have paid annual rentals,

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[74]Appendix A, 25e., p. 40; 25g., p. 41.

[75]Appendix A, 26i., p. 46.

[76]Appendix A, 36f., p. 56.

[77]Appendix A, 36g., p. 56.

fire protection taxes and land taxes. These carrying costs represented a form of prepayment to the Crown, to which must be added the interest on this prepayment up to the time that the timber is cut and royalty paid. The tenure holder also bore the cost of interest, compounded, on the cost of the initial investment until such time as the timber was cut.[78] Briefs written for the Task Force by industry claimed that the Crown "has had the benefit of the accumulated carrying costs since the date of issue of the licences, and it would be obviously unjust to disregard these costs in establishing a new royalty rate today comparable to stumpage paid on present timber sales which have contributed nothing to Provincial revenues prior to sale of the timber. In addition, there should be some consideration for the risks involved to the licensee in holding this timber over such a long period. Risk of loss due to fire, insects and disease, as well as exposure to deletion by means of ecological reserves, parks and permanent wildlife corridors cannot be ignored."[79]

Industry believed the conditions under which they now held their tenures were quite different than those being described by the Fulton Commission. Thus, the statement by Fulton that the lessee has received "full value for the rental paid by him" no longer held true. Restrictions imposed since that time did not allow the lessee to realize the full option to cut during any one year period of rental. Licences were now subject to restrictions of volume and location and the right to cut had to be authorized by either an annually approved cutting permit or an approved cutting plan that adhered to Forest Service guidelines that provided for leave strips, fire breaks, game corridors and deferment periods.[80] Only if the Crown had reinvested its revenue from royalty as originally envisioned, some argued, could there be any claim by the Government that the benefits of such investments cancel out any rental debt.[81]

Industry reiterated the view that since their inception, licences and leases have been regarded by all parties as private property in which the investor had a distinct equity. There was no expectation, either by the vendor or purchaser, that these tenures were being purchased for immediate liquidation. The intent was investment, thus implying equity.[82] The fact that the government was taxing these tenures as private property with capital was evidence of this equity.[83] The original reason the licences were granted as they were was "incentive and the value of the incentive was what enticed the purchase of berths and licensees by companies and people over the years. If these cutting rights provided no equity, what incentive would there have been to hold timber for so many years?[84]

Industry also pointed out that "over half a century of administration has treated these tenures as property in which the licensee had an equity. They have, for many

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[78]Appendix A, 41a. & 42b., p. 59; 41h., p. 61.

[79]Appendix A, 41a. & 42b., p. 59.

[80]Appendix A, 41c., p. 59; 41g., p. 61.

[81]Appendix A, 41e., p. 60. The re-investment of royalty in the forests is described by E.C. Manning. See Appendix A, 32a., p. 52.

[82]Appendix A, 41f., p. 60.

[83]Appendix A, 41f., p. 60; 42d., p. 67; 42k., p. 70.

[84]Appendix A, 41h., p. 61.

years, been taxed. They have been used as collateral at the bank. They have been bought and sold. They have been included along with Crown grants into Tree Farm Licences. [T]his history constitutes a recognition of these as private property."[85]

Nonetheless, according to the Task Force on Crown Timber Disposal, private acquisition payments should have no relevance in the case of royalties "except insofar that they indicate that resource rents are not being captured under the present royalty arrangement and are being capitalized instead in private market values. Private transactions in old temporary tenures were made in the full knowledge that the Crown reserved the right to adjust royalties in such a way as to protect the public interest as circumstances changed."[86] The Task Force agreed with Fulton's conclusion that timber holders receive full value for their annual rental payments:

> The argument that the capital value of these past payments should be allowed for in determining future royalties implies that the longer this timber is withheld from harvesting the smaller will be the public equity in it--a proposition which we cannot accept.[87]

VI. Summary

What becomes clear from a review of the historical debate over royalties is that the central issues have not been centered on the right of government to increase royalty. Neither has the debate remained focused upon the methods by which royalty should be calculated. What has been at the heart of the royalty debate from the beginning is the question of the size of the share in the value of timber that should be reserved for the Crown. Equally important has been the matter of what constitutes legitimate carrying costs. Central to the question of costs has been the question of whether or not tenure holders have accumulated equity in the timber.

Knowledge of these historical issues surrounding timber royalties in British Columbia will, hopefully, be a useful tool with which to craft solutions and agreements.

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[85]Appendix A, 42j., p. 69. For a similar argument see Appendix A, 42l., p. 70.

[86]Appendix A, 41o., p. 64.

[87]Appendix A, 41p., p. 64.

APPENDIX A

A Chronology of Resource Materials Pertaining to Timber Royalties in British Columbia

1778

1a. The first sale of timber in B.C. is recorded in 1778.
The First reported commerce in timber was in 1788. In that year Captain John Meares loaded a vessel with furs and deck load of spars for the China trade.

Report of the Commissioner Honourable Gordon McG. Sloan, Chief Justice of British Columbia relating to the Forest Resources of British Columbia, 1956 (Victoria: Queen's Printer, 1957), p. 16. Hereinafter cited as Sloan Commission, 1956.

1848

2a. The first sawmill in B.C. was established in 1848.
It was not until 1848, on Mill Stream near Parson's Bridge at the head of Esquimalt Harbour, that the first machine operated sawmill began operation.

Sloan Commission, 1956, p. 17.

1853

3a. The first regulations and charges regarding the cutting of Crown timber:
The Council of Vancouver Island establishes regulations concerning the cutting and removal of Timber from the public lands resolves that:

1st That the Collector of the Customs be empowered to issue permits for cutting timber on the public lands, and to levy a Duty of tenpence per load of 50 Cubic feet on all timber cut thereon.

2d That no timber be cut on the public lands, without a Permit under a Penalty of 10 pounds and forfeiture of the said Timber.

3 That no person not being a subject of Her Majesty the Queen and a resident of Vancouver's Island, shall cut timber under a Penalty not exceeding 20 pounds.

4 That all persons cutting Timber on the public lands shall make a true and correct return of the same of the Collector of Customs, who may cause such timber to be remeasured, at the cost, of the persons claiming the same, should he see cause to doubt the correctness of said returns.

1853

That the Collector shall charge a fee of one Pound Sterling, on every Timber licence which shall be issued by him.

Journals of the Colonies of Vancouver Island and British Columbia 1851-1871 (Victoria: PABC, 1988), 23 September 1853.

1865

4a. The granting of timber rights without permanent alienation of Crown land is made possible by the Land Ordinance.

The Land Ordinance of 1865 contained the following provision:

> 53. Leases of an extent of unoccupied Crown lands may be granted by the Governor to any person, persons or corporations duly authorized in that behalf for the purpose of cutting spars, timber or lumber, and actually engaged in those pursuits subject to rent, terms and provisions as shall seem expedient by the Governor.

This ordinance or proclamation introduced for the first time the system of granting the right to cut timber on Crown lands without alienation of the land itself. It is the foundation upon which our modern tenure systems are based, and although temporary alienations have taken varied forms, in substance the principle has remained unaltered throughout the years, resulting in the present Crown ownership of productive forest land areas.

Report of the Commissioner Honourable Gordon McG. Sloan, Chief Justice of British Columbia relating to the Forest Resources of British Columbia, 1945 (Victoria: King's Printer, 1945), p. 86. Hereinafter cited as Sloan Commission, 1945.

The first alienations of harvesting rights under the Land Ordinance which carried no conditions with respect to size, payments to the Crown or terms. The only fixed condition was that leases were available only to those "actually engaged" in harvesting timber, as stipulated in the Ordinance. The Ordinance also provided...that leases might be subject to "such rent, terms and provisions as shall seem expedient to the Governor" and under this provision and subsequent enactments various Crown charges, terms and other conditions were later imposed.

Task Force on Crown Timber Disposal, Crown Charges for Early Timber Rights: Royalties and Other Levies for Harvesting Rights on Timber Leases, Licences and Berths in British Columbia. Dr. Peter H. Pearse, chair. (Victoria: Queen's Printer, February 1974), p. 54. Hereinafter cited as Task Force, 1974.

1870

5a. In 1870 Timber Leases are created.

The issuance of leases of timber goes back at least as far as 1870. By the Land Ordinance of that year leases were authorized of any extent of unpre-empted Crown lands to any person, persons or corporations...for the purpose of cutting spars, timber or lumber and actually engaged in those pursuits, subject to such rents, terms and provisions as should seem expedient to the Lieutenant-Governor in Council.

Final Report of the Royal Commission of Inquiry on Timber and Forestry 1909-1910, Fred J. Fulton, chair. (Victoria: King's Printer, 1910), p. 11. Hereinafter cited as Fulton Commission, 1910.

1871

6a. The Dominion Railway belt is established in the Terms of Union. This Crown grant included timber rights.

In 1871 British Columbia entered Confederation and became part of the Dominion of Canada. By section 11 of the terms of Union the Dominion undertook to construct a railway to connect the seaboard of the Province with the railway system of Canada, and in return this Province...conveyed to the Dominion a belt of land extending for 20 miles on each side of the main line of the Canadian Pacific Railway, totalling 17,000 square miles. Then because some of this land was valueless for agriculture or other productive enterprise, the Province also conveyed to the Dominion as "lieu lands" a block containing 5,470 square miles in the Peace River belt. In a separate transaction the Province conveyed to the Dominion 3,000 square miles on Vancouver Island.

Sloan Commission, 1945, p. 87.

1879

7a. A royalty rate on leases is established in 1879.

Royalty was fixed at 50 cents per Mfbm and applied to all leases granted after 1879. Half of the royalty was refundable upon export of spars, poles, shingles and manufactured lumber from the Province until 1900 (on shingles until 1905).

Task Force, 1974, p. 54.

1887

8a. Royalty is reserved on all Crown lands granted after April 7, 1887.

In 1887 an attempt was made to forbid the sale of Crown lands "chiefly valuable for timber," but the only safeguard provided was the declaration by the applicant that the lands sought to be purchased were "not chiefly valuable for

1887

timber." Thus although the principle of state ownership of timber lands was first recognized in 1884, the means to effectuate it were largely ineffective.

Prior to April 7th, 1887, timber lands were Crown-granted without any reservation of royalty or provision that the timber cut was to be manufactured within the Province. On and from this date the Provincial "Land Act" not only required purchasers of Crown lands to take a declaration that the land in question was "not chiefly valuable for timber, "but reserved the timber to the Crown. Lands granted between April 7th, 1887, and April 28th, 1888, became known as "patented lands" and the owner thereof had to obtain a licence to cut the timber, and pay a royalty of 25 cents per thousand feet.

Sloan Commission, 1945, p. 88.

1888

9a. In 1888 royalty is reserved on all future alienated lands.

In 1888 it was first provided that a royalty...should be reserved on all timber cut upon lands thereafter granted.

Fulton Commission, 1910, p. 11.

9b. The right to cut timber under license is first granted in 1888.

The right to cut timber under license was first granted in this year. The area was limited to 1,000 acres and the period to one year. The license was not transferable and not more than one special license could be held by one person at the same time.

[Fee of $50, license renewed at the discretion of the Chief Commissioner of Lands and Works, Royalty 50 cents per thousand]

Fulton Commission, 1910.

9c. The 1888 Land Act changes and clarifies regulations surrounding leases.

[The legislation of this year] made clear the intention that leases were designed to encourage manufacturing in the Province. It was required that the lessee operate a sawmill with a 12-hour capacity of at least 1 Mfbm for each 400 acres under lease. There apparently was some difficulty in enforcing the spirit of this provision, and subsequent amendments made it more explicit.

Task Force, 1974, p. 54.

1888

In this year leases of unpre-empted Crown lands could be granted for a term not to exceed thirty years (rent 10 cents per acre, royalty 50 cents per thousand feet, lessee must build Mill capable of cutting 1000 feet per day for each 400 acres).

A ground rent of five cents per acre was imposed on every timber lease granted since 31st December, 1879, and prior to the passage of the Act.

Fulton Commission, 1910, p. 11.

9d. The 1888 Land Act stops the grant of patented lands.

The "Land Act" of 1888 ended the granting of "patented" lands but preserved the right to obtain licences to cut timber thereon.

Sloan Commission, 1945, p. 88.

9e. The first Timber Inspector's report anticipates substantial growth in forest revenue.

The revenue which will accrue...from the Crown Lands and Timber Limits of the Province, judging from the increased number of General and Special licences now, and soon to be, issued promises to be much greater than it has been in former years. The increase in the number of licences and the more extended operations carried by them will render it necessary that a close supervision should be kept, and will at the same time considerably increase the difficulties (now sufficiently apparent) there are in making such a supervision thoroughly effective over the very large scope of the country in which the lumbering industries of the Province are distributed.

Sessional Papers, Third Session, Fifth Parliament of the Province of British Columbia, Session 1889. (Victoria, B.C.: Queen's Printer, 1889), p. 121.

1891

10a. In 1891, Leases begin to be sold by by tender or competition.

In 1891 a system of selling leases by tender to the person paying the highest cash bonus was introduced.

Sloan Commission, 1945, p. 92.

1892

11a. In 1892, Leases are limited to a term of 21 years.

It was provided that leases be put up to competition and term reduced to 21 years and 10 cents per acre as a guarantee that a sawmill would be built.

1895

12a. In 1895, speculative holding in timber leases is made possible.

[S]peculative holding of timber leases...[began] in 1895, when it became possible for people other than mill operators to obtain leases. The new system proved so popular that, by 1901, much more timber had been staked than could possibly be cut in 20 years.

The government's response to this was to make leases perpetually renewable....

By making leases perpetually renewable the argument ran, their utilization would be more "orderly" with no destructive "high-grading" undertaken to produce fast returns just before the term expired. Leases soon became the most important form of tenure for both operators and speculators.

Derek Reimer, "_____" Monday Magazine, August 4-10, 1975, p. 9. Derek Reimer is Assistant Director of the aural history programme at the Provincial Archives of British Columbia. His work in historical geography led him into studies in B.C.'s resource development. Hereinafter cited as Reimer.

1896

13a. In 1896 Timber lands are defined. After this time timber lands were reserved from sale.

There was still no restriction, however, placed upon the right to acquire timber lands by purchase from the Crown by the ordinary methods of purchasing lands, the only difference made being the reservation of the 50 sent royalty, and it was not until 1896 that timber lands were defined. In that year a provision was inserted by which carrying 8,000 feet to the acre west of the Cascade Range and 5,000 feet to the acre east of the Cascades were defined as timber lands and reserved from sale.

Fulton Commission, 1910, p. 11.

In British Columbia, up to the year 1896, merchantable forest could be bought from the government at the ordinary rate for first-class land, and in this manner certain areas passed into private ownership.

Fulton Commission, 1910, p. 15.

1899

14a. Royalty and rental must add to a minimum charge of 50 cents per acre.

It was provided that rental on leases should be 15 cents per acre and that royalty and rental should add to no less than 50 cents per acre or another rental would be levied to make up the difference.

Fulton Commission, 1910, p. 12.

1901

15a. Leases are made renewable in 1901.

Provisions were made for the renewal of leases for "consecutive and successive periods of 21 years on such terms, conditions, royalties and ground rents as might be in force by statute at the time of expiration of lease.

Fulton Commission, 1910, p. 12.

15b. Licences are reduced in size.

Licences were reduced in size from 1,000 to 640 acres and licence fee increased to $100.

Fulton Commission, 1910, p. 13.

15c. Railway Lands Timber Royalty Act clarifies the status of Crown railway grants in relation to royalty.

The period between 1875 and 1899 was an era of railway speculation in British Columbia. A great number of railways were incorporated in the Kootenay area and in the northern area of British Columbia, and other Crown Grants were made to many of them in furtherance of railway construction..... A total of 8,203,410 acres were granted to various railways during this period; 4,065,756 acres were eventually repurchased in 1910 and 1912 and out of the remainder over 2,000,000 acres represent lands granted to the Esquimalt and Nanaimo Railway.

In 1901 the "Railway Lands Timber Royalty Act" clarified the status of these railway grants in relation to royalty by stating that timber royalty was not a tax, and that the tax exemption privileges in the several railway land grants did not carry exemption from royalty. This Act has never been applied to Esquimalt and Nanaimo Railway lands.

Sloan Commission, 1945, p. 88.

1901

15d. Pulp Leases begin to be granted in 1901.

Around the turn of the century demand for pulp timber began to emerge, and the government made provision for pulp leases. These (leases) were granted for 21 year as renewable, subject to rentals of 2 cents per acre and royalty of not more than 25 cents per cord of pulpwood.

Task Force, 1974, p. 55.

1903

16a. The granting of Pulp Leases is stopped.

Provisions for the granting of pulp leases were repealed.

16b. Timber Lease rental rates are changed.

Timber leases had a rental of 25 cents imposed which would be reduced to 15 cents should the lessee keep in operation a mill of a certain prescribed capacity.

1905

17a. The creation of the Special Timber Licence allows for speculative staking of timber.

Before 1905, speculation in B.C. Timber had been officially discouraged by granting leases only to sawmill operators and by making leases and licences nontransferable.

This situation was dramatically altered when the McBride government decided to throw B.C.'s forests open to speculative staking. It discontinued the old form of lease and licence and devised a new.. tenure, the Special Timber Licence (STL).

Simply by planting a post in the ground and publishing a description of its location in the Gazette a person could for a small annual fee, retain the right to cut timber for two years on one square mile of forest at the current rate of royalty. No limit was placed on the number one person could hold and holdings were easily transferable for a nominal charge.

Most of the forests of eastern and southern North America had been devastated by overcutting and wasteful burning. Eastern and Midwestern lumbermen were seeking new stands of timber in the western U.S. and B.C..

The opening of B.C.'s forests for staking combined with the continent wide appetite for timber to create an unprecedented rush. By the end of 1907, when the staking of licences was halted more than 15,000 new licences of up to one square mile each had been taken up. Most of these were on the coast and included the bulk of the remaining prime timber.

1905

The transferable STLs created a brisk business for investment dealers as the process of concentrating timber rights into a few large holdings began.

The original reason for STLs was for McBride to raise revenue...and in these terms he was successful with forest revenue rising from 6% of government revenue in 1903 to 40% in 1909. One of the by-products associated with this new policy was the need for a much larger forest administration to keep up.

Far more timber had been staked then could possibly be used in the next 100 years. "Overstaking threatened inefficient and wasteful cutting." ....[I]n order to prevent destructive high grading Fulton made licences renewable.

Derek Reimer, p. 9-10.

1907

18a. All unalienated timber is placed in reserve by the Province.

An order-in-Council was passed by the Government reserving all unalienated timber in the Province, thus keeping in the possession of the Government all timber lands not already taken up by Crown Grant, lease or licence."

Fulton Commission, 1910, p. 13.

18b. In 1907, Leases and Licences cease to be granted.

Order in Council December 24, 1907 discontinued granting both leases and licences.

Sloan Commission, 1945, p. 91.

18c. Chief Commissioner of Lands' proposal to raise royalties meets storm of protest.

Timber royalties had not been raised from 50 cents per thousand board feet since they were instituted in 1888. [W]hen an increase to 75 cents was announced in April, 1907, the industry objected strenuously. Under heavy attack, Chief Commissioner of Lands and Works, F.J. Fulton, postponed legislation until the 1908 session so as not to prejudice existing contracts of operating lumbermen. But the international financial crisis of late 1907 intervened making royalty increases the following year out of the question. By the time financial and trading markets had improved, the licence holders whose numbers had rapidly swelled in the interim...embarked on an...organized campaign for stable tenure conditions, including fixed charge.

1907

Stephen Gray, Forest Policy and Administration in British Columbia, 1912-1928, M.A. Thesis (Burnaby: SFU, 1982), p. 21-22. Hereinafter cited as Gray. The primary sources used by Gray for the above excerpt are the Vancouver Daily Province, 15 & 16 April 1907.

1909

19a. Andrew Haslam, Chief Timber Inspector, says the present proportion of rental to royalty should be maintained.

"I think the rentals and royalties are fairly balanced at the present time and the same relative proportion ought to be maintained."

"Testimony of the Commission on Timber and Forestry, 1909," in Commission on Timber and Forestry, 1909, PABC GR 271, p. 1314. Hereafter cited as Fulton Commission Testimony.

19b. Andrew Haslam, Chief Timber Inspector, says royalty in B.C. is similar to that charged in other countries and could justifiably be raised in the future.

"The royalty here is as low as the royalty in most other countries. At the same time I believe the royalty here is as much as the industry can and will stand but I believe conditions will change so that it will stand more royalty."

Fulton Commission Testimony, p. 1315.

19c. Andrew Haslam, Chief Timber Inspector, recommends that in the event of an increase in charges, both rentals and royalties should be raised.

"If the increases were in royalties alone the whole revenue would be coming out of the operator and the public and the timber holder would not be contributing his fair share. As a rule timberholders are not operators on the Coast. The mills buy more than fifty per cent of their lumber from someone else."
[Haslam's argument is that increase in rental would make the holder anxious to get rid of his timber.]

Fulton Commission Testimony, p. 1328.

19d. Dr. Fernow explains the need to collect both rental and a royalty.

"Since an acre of timber yields only periodic returns, the greater part of the tax should fall due when the timber is cut, the deferred tax bearing a fair relation to the net yield of the property. The same principles which a century or more of experience has shown to be correct in Germany are applicable here. They recognize that annual taxes are necessary to levy since administrations need funds annually and cannot be dependent on the whim of owners as to when and how much they propose to cut, and hence, a regular annual tax must be levied.

1909

At the same time the intermittency and irregularity of income from forest properties is recognized on account of which in the absence of income the payment of taxes is hardship. This clash of public and private interests is overcome by a mixed taxation namely, a land tax levied annually and a stumpage tax levied as the stumpage becomes available."

"Compilation of abstracts from evidence and printed sources collected by the Commission," Commission on Timber and Forestry, 1909, PABC GR 271, Box 1, File 8, p. 6-7. Hereinafter cited as Fulton Commission Papers. This excerpt is also found in Forestry Quarterly, December 1908.

19e. G.O. Buchanan testifies before the Fulton Commission that there is no way to make royalties fair.

"Owing to the variable value of stumpage, there will never come a time when royalty can be much increased. Therefore, any system under which the Government deals with all alike is one which they are going to lose. There is no way to make a royalty fair all over B.C."

Fulton Commission Testimony, p. 7339.

19f. John Oliver (M.L.A.) requests that ample warning of royalty increases be given.

"I think it would be better for business, even for the manufacturer, and certainly no worse for the Province if there should be certainly a year's notice before any increase of royalty took place.... It would be ample notice to the logger and manufacturer--to adjust himself to the proposed change in conditions."

Fulton Commission Testimony, p. 1197.

19g. Dr. Judson Clark (former Provincial Forester in Ontario and Manager of Continental Lumber) says the chief defect of royalty is that it is insensitive to the rise and fall of the market.

"The royalty is capable of being adopted as an ideal method of forest taxation. The royalty as at present collected has two chief defects; one in that it bears relatively more heavily during seasons of low prices than when prices are high. The season of dull markets calls for just as high taxation as a season when the mills are making money."

Fulton Commission Testimony, p. 1129.

1909

19h. R.J. Skinner, Provincial Timber Inspector, says, ideally, royalties should be tied to the conditions of the market.

"The fairest way of all would be to make them depend on the conditions of the market, but the difficulty is who is to ascertain just what these conditions are. You would have to get evidence of that and it would be like a judge deciding a case as to whether it would stand advance or not. There is one thing we must consider, the lumber business in my view of it is one of the most uncertain things in the world."

Fulton Commission Testimony, p. 202.

19i. R.J. Skinner, Provincial Timber Inspector, believes the Province should retain a "reasonable proportion" of the increase in timber value.

In regards to alienated timber:

A. "I think in that asset of the province we have a right to a certain portion of whatever the increase in value may be."

Q. "A certain reasonable proportion?"

A. "A reasonable proportion, that is my view of it."

Fulton Commission Testimony, p. 202.

19j. R.J. Skinner suggests a percentage as the simplest way for the Province to share in the increase in timber value.

A. "The simplest way would be so much percentage on the value of timber sales in addition to the present royalty."

Q. "It would really be based on the net results?"

A. "On the net results."

Q. "In other words, sharing in the profits of the operations."

A. "Yes."

Fulton Commission Testimony, p. 209.

19k. Professor Roth explains why royalty should be a percentage of stumpage.

"'A' gets $12 for his logs and they cost him $6. His stumpage value is $6. 'B' gets $10 and the logs cost him $7. His stumpage value is $3. Why should 'A'

1909

and 'B' both pay the same 50 cents? Make the royalty a certain percentage of the stumpage value. Let 'A' pay $1.50 while 'B' pays 75 cents. If 'A' has a poorer quality and can only make 50 cents per M. let him log this and pay 12.5 cents royalty."

Fulton Commission Papers, Box 1, File 8, p. 11.

19l. Peter Lund, Managing Director of Crows Nest Pass Lumber, believes it is the customer that pays the royalty.

"I am not so much afraid of the royalty, because that is a question of the consumer--the man that consumes is the man that foots the bill..."

Fulton Commission Testimony, p. 877.

19m. Otto Lachmund, Manager of Arrow Lakes Lumber Company Limited, argues that royalties should be same on all tenures.

"This, in equity, should not exceed those derived from any other form of timber holdings, whether Crown grants or leases. If the Government cannot increase the royalty on these, in justice they should not be increased on timber cut under special licences. If all may be increased, there should be not objection by the timber holders to the advance of royalty, as the lumber business improves and stumpage becomes more valuable."

Letter from Otto Lachmund Manager to B.C. Timber & Forestry Commission. Victoria, B.C. October 2, 1909. Fulton Commission Papers, Box 1, File 2.

19n. Gifford Pinchot warns that low royalties lead to wasteful forestry practices.

"Low stumpage prices create indifference to forest values.... There is such a thing as having lumber too cheap for its own good. It is as though we were able to buy coal for half the winter below the wholesale price from a dealer about to leave town; but for the rest of the winter we are not able to by coal at all. Overcheap stumpage means wasteful and destructive logging."

Gifford Pinchot, Annals of the American Academy, 1909 cited in Fulton Commission Papers, Box 1 File 8.

1910

20a. Overview of the 1909-1910 Testimony to the Fulton Commission:

[F]ew witnesses were in favour of raising rents, and the majority wanted them fixed. They agreed that the government had a right to a share of any increment in the value of timber, and thus advocated that the government retain the right

to vary royalties. Against this they balanced the need for investment stability within the industry, and felt they had to know in advance what their operating costs would be. To this end, many proposed fixing royalties for a period of five or even ten years, and reviewing them after that. The four representatives of organized labour had an entirely different view, however. They all favoured increasing licence rentals, and lowering or even abolishing royalties, because this would ensure that the timber on licences was actually cut.[1] In such a view they were not entirely alone among the witnesses. Edward H. Heaps--"one of the largest operators" in British Columbia[2]--put forward the same idea. He suggested that royalties should be fixed for at least ten years,[3] and that any increase in Crown charges should be on the rent. He reasoned that any increase in royalties would only affect operators, whereas augmenting the rent would make it more expensive for speculators to hold their timber. However, even he did not advocate increasing rents in the near future.[4]

Robert Howard Marris, "Pretty Sleek and Fat": The Genesis of Forest Policy in British Columbia, 1903-1914, M.A. Thesis (Vancouver: UBC, 1979), p. 57-58. The primary sources used in the above excerpt are as follows:

[1]Vancouver, Daily News-Advertiser, 30 September 1909, p. 11, c. 2.

[2]Proceedings of the Fulton Commission, Vol. 2, p. 492--A.S. Goodeve's phrase. McDonald lists Heaps as being prominent in the Vancouver business elite from 1890 until at least 1913. p. 493.

[3]Fulton Commission Proceedings, vol 2, p. 395.

[4]Fulton Commission Proceedings, vol.2, p. 427

20b. The Interim Report of the Fulton Commission states that most people agree that Government should retain control over royalty rates.

A majority of the witnesses who appeared before us strongly advocated that the licences be made renewable in perpetuity, or at least for so long as there should be merchantable timber on the lands covered by such licences. A great many of the witnesses also strongly urged that the rentals or annual licence fees charged should be fixed unalterably at not more than the present rates, though with a few exceptions, they thought that the Government should retain control of the royalties to be charged.

Royal Commission of Inquiry on Timber and Forestry: Interim Report. Fred J. Fulton, chair, in the Sessional Papers, Parliament of British Columbia, Session 1910 (Victoria: King's Printer, 1910) p.H13-H14.

1910 Excerpts from the Final Report of Fulton Commission 1910:

20c. The Fulton Commission's Final Report states that the leasehold system marked a significant change in Government Policy. Leases were designed to encourage the development of the lumber industry.

The abandonment of the practice of the Crown granting timber land and the adoption of a leasing system marked an important step forward in the Provincial policy. That the change originated in the desire of the Legislature to encourage the establishment of saw mills is made very evident by the Act of 1888 that made the building of a mill an essential condition of every lease..... Apart from this, attempts were made to hasten the local development of both the pulp and tanning industries by concessions of large leasehold areas at nominal rates.

Fulton Commission, 1910, p. 15.

[By 1905] it was becoming obvious that the old leasehold system had served its turn in helping to establish the lumber industry firmly in the Province. The future of that industry would evidently be dictated by market requirements and business laws, and the provision of cheap Crown stumpage as a bonus upon operation had ceased to be necessary.

Fulton Commission, 1910, p. 15.

20d. The Report observes that very little revenue was realized by the Crown through the leasehold system.

Apart from the timber lands granted to mill-owners, the Crown had obtained a small revenue form standing timber by leasing areas at higher rentals to non operators. This was evidently an unsatisfactory means of anticipating the future. Little was known concerning the timber supply of the continent and probable developments in the lumbering industries. Because great changes might be at hand that would cause stumpage prices to rise beyond all normal expectation, it was felt that to part with timber at the low existing prices and upon the fixed conditions of 21-year leases was a poor way of drawing immediate profit from the immense idle area of Crown forests.

Fulton Commission, 1910, p. 16.

20e. The final report of the Fulton Commission observes that transferable and renewable licences with an unfixed royalty allow for the reservation of a share in the increment of value of standing timber as it should accrue.

The legislative problem was solved in a most ingenious manner by the abolition not only of the leasing method but also of the limited, non-transferable licenses,

1910

and by the adoption of an entirely new principal of forest policy. That principle was the reservation of a share in the increment of value of standing timber as it should accrue. It is true that other Provinces in Canada had attempted something of the kind by leaving uncertain the amount of royalty that they would levy in future years upon the timber sold by them under their auction-licence systems. But tardy recovery of some of the public's share in the risen value of the licensed timber bears no comparison, as a policy, with the effective and subtle control that the British Columbia Government retained in 1905 over future alienations of Crown timber. This power was secured by the issue of transferable licences, options to cut timber during a 21-year period on specified square miles of forest, and the essence of the idea lay in the fact that it was left entirely to the Government to fix, from year to year, what annual payments should be made for the renewal of these options."

Fulton Commission, 1910, p. 16.

20f. The report notes that new licences were very popular despite the knowledge that royalty rates could change at any time.

Although the new licences were thus subject to any alteration in either rental or royalty that the Government might at any time impose, they were taken up with great confidence both by operators and investors. In fact, the opportunity to acquire standing timber in British Columbia caused recognition of its value to burst with suddenness upon the lumber interests of the continent. From less than 1500 the number of licences sprang to over 15,000.

Fulton Commission, 1910, p. 16.

20g. The Report remarks that changes in the value of timber up to this time were recognized and collected by the government through changes in rental rates.

Though part of the price of Crown stumpage--that represented by royalty--has remained unaltered for more than 22 years, recognition of the rise in the value of standing timber during that period has been made by the Legislature. From time to time increased rentals have been imposed. In 1895, for instance, alienation of stumpage for holding purposes was made in return for an annual rent of 15 cents; in 1899 this was changed to 50 cents; after 1903 to 25 cents, and since 1905 to 22 cents or 18 cents according to the locality.

Fulton Commission, 1910, p. 39.

1910

20h. The Fulton Commission's final report points out that the recently granted right to leasehold renewal was not accompanied by the necessary statutory establishment of royalty rates.

In 1901 the Legislature gave the right of renewal in successive periods of 21 years to the holders of all leases then in existence, and the majority of holders took advantage of this privilege.

It is in connection with this question of renewal that difficulties have now arisen, for though the Act of 1901 sets forth that at the expiry of the original period of any renewable lease the timber shall continue to be held by the lessee "subject to such terms, conditions, royalties and ground rents as may be in force by Statute" at the time of expiry, yet no provision for these has been "in force by Statute" since 1905. [T]he situation calls for immediate legislation.

Fulton Commission, 1910, p. 46.

20i. The final report rejects the contention that rental should be used as a claim against timber value.

[R]eference might be made to the claim sometimes advanced that the holder of a lease who has paid an annual rent for a period of twenty to thirty years is entitled to consideration upon that account at the time when the terms of his lease need renewal; that in fact these past payments constitute an investment in the timber that demands respect. It seems particularly clear to your Commissioners that the answer to this argument is that during each year of the lease the lessee has received full value for the rental paid by him; that this annual rental must be viewed in the same light as the annual fee paid by the special licensee, namely, as conferring a mere right or option to cut timber during that one year; and that the fact that the lessee may have paid rentals for thirty years does not put him in any better position or confer on him any higher rights than those he had after payment of the first year's rental. Therefore when an expired lease is brought to the Government for renewal the lessee's investment in that lease by way of rental is nil."

Fulton Commission, 1910, p. 46.

20j. The Fulton Commission recommends changes to leasehold charges (including royalties).

Your Commissioners consider that two principles must be respected in fixing rental, royalty, terms and conditions for time-expired leases:

1910

(1) There must be recognition of the fact that timber taken from leaseholds will come into competition with timber cut from licensed lands. Therefore, at no time should there be placed upon lessees any burden of impost greater than that borne by licensees.

(2) As far as the rights possessed by lessees under their contracts with the Government permit, equality must be established between the two classes of stumpage holders.

Fulton Commission, 1910, p. 47.

20k. The Fulton Commission recommends that royalty rates and fees be equal for leases and licences.

[W]e recommend that, if it would not be any abrogation of rights presently existing, provision should be made for equalizing annually the payments of rentals and royalties as between leaseholders and licensees.

Fulton Commission, 1910, p. 47.

20l. The Commission recommends that the right to indefinite renewal be extended to all the remaining lessees.

Commission also recommends that the privilege of indefinite renewal be extended to all the remaining lessees.

Fulton Commission, 1910, p. 47.

20m. The Fulton Commission recommends that pulp leaseholders be allowed to cut timber for lumber on their leasehold provided they pay the royalties due for lumber rather than pulpwood.

[The issue outlined by the Commission was that some pulp lease holders desired to start logging operations for lumber. Earlier pulp leases did not explicitly disallow this activity while later leases expressly forbade the practice. The Commission recommended that since arrangements for logging for lumber purposes had already been granted to one company such arrangement should be available to all. The practice should only be allowed if the royalty and rental rates for those areas be levied at the same rate as for other leases and licences.]

Fulton Commission, 1910, pp. 50-54.

1910

20n. The Commission recommends that no further alienation of timber take place.

[The Commissioners] urge, most strongly, that such reservation be continued indefinitely and that no further alienation of timber lands take place, except under very special circumstances.

Fulton Commission, 1910, p. 55.

20o. In the event that reserved timber need to be placed on the market, the Fulton Commission recommended the following procedure:

The timber should be cruised and an upset price fixed per thousand feet for each important species. The license to cut timber on the berth should then be sold by public auction, the bids being amounts per thousand feet that applicants would pay in addition to the royalty as and when the timber was cut.... The annual renewal of the license should be subject to the same rental per acre, and to the same conditions and penalties, as those imposed, by the provisions of the "Land Act" then in force, upon the special licensees of the Province.

In all such sales it should be made a condition of the license that it should be removed within five years.

Fulton Commission, 1910, p. 55.

1912

21a. Premier Sir Richard McBride affirms the right of the Province to change royalty rates in order to retain a fair share in the rise in values of the unearned increment.

Under the special licence plan Parliament retains the power to increase both rental and royalty charges, so that as the timber values grow, so does the interest in the timber retained by the Province increase. The people are guaranteed a fair share in the rise in values, the unearned increment.

Task Force, 1974, p. 15.

21b. Some forest industry observers believed that perpetual tenures would lead to further concentration of ownership which would exert an irresistible pressure on government to keep royalties low.

There were those who felt certain that perpetual tenure once granted could not but lead to further concentration of timber holding in the hands of powerful American interests with enough financial and political influence to ensure that ultimate fixing of rentals and royalties at artificially low levels.

1912

Gray, p.23. The primary sources used in the above excerpt are the Vancouver Daily World, 6 & 8 March 1909. According to Gray, the Daily World based its predictions on the opinion of lumberman J. S. Emerson, ex-president of the B.C. Loggers' Association.

1913

22a. A proposal to raise royalties to $1.00 is announced by Mr. W.R. Ross, Minister of Lands.

A year after the forest Act was passed, Ross announced to the legislature an increase in timber royalties to $1.00. Since the 1907 proposal to raise royalties Ross claimed, the granting of perpetual timber and the reduction of fire hazard by the establishment of a forest protection system had "decidedly increased the value of timber licences."

Gray, p. 24.

22b. Forest Branch officials had recommended a higher royalty than what was actually proposed by the Minister in the legislature.

Forest Branch officials had informed Ross that, due simply to depreciation of the dollar a 50 cent royalty in 1900 should have been 71 cents in 1916. [T]he government was asking for...a 29 cent increase, or less than two cents per year. During the same period, stumpage values had...increased just over $1.00 in 1916 currency, or an average of six cents per year. The new royalty rate would thus yield the province a one-third share of the increment....

Gray, p.24. According to Gray, the one-third government share was substantially less than the 50 percent share to which Forest Branch officials felt the government was entitled. This above excerpt is also found in "Ability of the industry to bear extra charge (in B.C.)." British Columbia, Department of Lands, O Series Correspondence Files, roll 56, file 03873-1 #33-37, Lands Management Branch, Ministry of Lands, Park and Housing.

22c. Lumbermen desire a 30 year fixed royalty schedule.

At meetings held in the fall of 1913 between Ross, Chief Forester H.R. MacMillan and various representatives of the industry...the lumbermen insisted on a fixed schedule of royalty increases over 30 years. [Which according to Gray would almost certainly deprived the Crown of even a one-third share in stumpage.]

Gray, p. 25. The primary source of the above excerpt is the Vancouver Daily Province, 31 October 1913.

1914

23a. The history of timber royalties (1888-1914) as summarized in the Forest Branch Annual Report of 1914:

In 1888, when the Legislature first dealt in a comprehensive way with the disposal of Crown timber, a royalty of 50 cents per 1,000 feet B.M. was established as the standard figure for stumpage upon all logs cut for sawmilling purposes in the Province. It was not until the timber asset of British Columbia took on a new importance, with the issue of licences covering some 14,000 square miles during the years of 1905-6-7, that the question of readjusting stumpage rate was brought forward. In issuing those timber-cutting licences it was expressly provided that the royalty to be paid when logs were cut was not to have any fixed amount, but was to be subject to increase at the discretion of the Legislature, so that as the commercial value of the timber increased the Provincial Treasury should receive its due proportion of the increment. A proposal to make an immediate increase of 25 cents in royalty was brought forward soon after this, but the depression of 1908 caused the matter to be postponed until the end of 1912, when a revision of the Act was made and submitted to the Legislature at the beginning of the following year. The draft proposal was for certain fixed increases to be made in the royalty during the ensuing period of ten years. This tentative proposal formed a basis for keen discussion, and in the upshot it was decided to postpone legislation for a year. Investigation of the whole subject was carried on until February last the result was embodied in the Timber Royalty Act.

Province of British Columbia, Report of the Forest Branch of the Department of Lands for the Year Ending December 31, 1914. Hon. William R. Ross, K.C., Minister. (Victoria:King's Printer, 1915), p. 6. Hereinafter cited as Forest Branch Annual Report 1914.

23b. The formula for establishing royalty rates as outlined in the Timber Royalty Act:

[This Act levies royalties on a graded basis for the first time.]

The "Royalty Act" provided that royalties should be based upon the selling price of lumber, the Government taking 25 percent of any increase over $18.00 per thousand feet, such increase to be graded upwards until a maximum of 40 percent was reached in 1954. This Act proved unworkable and was dropped in 1924.

Provincial Timber Royalties: Historical Review 1914-1937 British Columbia Ministry of Forest Library, p. 1. Hereinafter cited as Historical Review 1914-1937.

1914

23c. W. R. Ross, Minister of Lands, states rentals are only payments on the interest on the value of timber reserved for industry.

The Government...handed over merely the cutting rights. In return licensees were required to pay only annual interest on the value of the timber reserved for them, which should be paid for when it was cut.

Task Force, 1974, p.25.

23d. The 1914 Annual Report of the Forest Branch claims that royalties were never a fixed amount.

In issuing those timber-cutting licences it was expressly provided that the royalty to be paid when logs were cut was not to be any fixed amount, but was to be subject to increase at the discretion of the Legislature, so that as the commercial value of the timber increased the Provincial Treasury should receive its due portion of the increment.

Forest Branch Annual Report 1914, p.16.

23e. Forest Branch's Annual Report heralds the new Timber Royalty Act as a bold application of modern legislative theory.

The "Timber Royalty Act" attracted widespread attention on account of its bold application of the modern legislative theory which calls for the retention by the State of a due share in the unearned increment upon natural resources. By establishing a sliding scale under which the Government is assured a full proportion of future increases in the selling price of lumber, the Act made possible for the Government to give stability of tenure to the lumbermen without injury to the public interest. Financial institutions are now able to accept timber licences as permanent investments. There is no doubt but that the added strength which has been given to British Columbia timber titles by this Act was of great effect during the stress of the past few months in maintaining faith in this, the most important class of Provincial securities and in enabling investors and manufactures to meet their obligations."

Forest Branch Annual Report 1914, p. 5.

23f. The Annual Report of the Forest Branch concludes that although royalty based on the average selling price of lumber is the most practical device for realizing the public's share in the increase in timber value, it is not necessarily the ideal method.

Hence a sliding scale had to be devised in order that the stumpage obtained by the government in time to come might reflect any change in timber values, up

1914

or down. Since these values are the difference between selling-price and cost of manufacture an exact determination of royalty could only be made after a complete audit of the books of every operating concern. As a practical matter the sliding scale had to be based on some simpler method than this, and accordingly the average selling-price of lumber was taken as the barometer of stumpage value.

Forest Branch Annual Report, 1914 p. 6.

23g. W.R. Ross, Minister of Lands comments to the press about the newly passed Royalty Act.

The royalty legislation was "not an ideal policy, because ideal policies do not work;..it faces facts and deals with actual conditions.

Western Lumberman, 11 March 1914.

1921

24a. One of the problems with the 1914 Royalty Act is that it cannot compensate for inflation.

By June 1919 the 1914 dollar was worth 42.6 cents. The average price of lumber over the four-and-a-half year period ending June 1919, had been inflated to $19.50 or $1.50 over the base level provided in the 1914 Act. On 1 January 1920, royalties were thus increased by 37 cents per thousand, or from 43 to 73 percent depending on grade and region, while stumpage values (without counting for depreciation of the dollar) had increased just 12 percent during the war. When continued inflation pushed the cost of producing lumber to $33 per thousand by the end of 1920, lumbermen and timber holders quickly realized that a new basis of calculating royalties would have to be devised before the next royalty revision at the end of 1924. In a joint memorandum to the Liberal Minister of Lands, T.D. Pattullo, the various industry associations, now under the leadership of the newly-formed Timber Industries Council of British Columbia (TIC), an umbrella association of coast forest industry associations, called for the abandonment of a scheme which both depreciated the investment value of licensed timber and handicapped loggers and manufactures.

Gray, pp. 29-30. Primary source for the above excerpt is a Memo to the Minister of Lands on Timber Royalty, 25 May 1921 from J.D. McCormack, Timber Industries Council. PABC Add. Mss. 3 vol. 3, file 9, #13-17.

1923

25a. The Timber Industries Council favors royalties on a fixed scale for a term of 30 years.

The Timber Industries Council of British Columbia argued in a memorandum to the Department of Lands that British Columbia being a debtor province, relied on the attraction of outside capital to develop its natural resources. By setting a fixed scale for charges for a term of 30 years, the government would actually attain a greater revenue from the resulting increase in investment and productivity than it could hope to get under the provisions of the present Royalty Act of 1914.

Gray, p.30. Primary source for the above excerpt is a Timber Industries Council Royalty Committee memorandum for presentation at 6 March 1923 meeting with Lands Department officials, Council of Forest Industries of British Columbia Papers, Box. 44, file 5, Special Collections Division, University of British Columbia Library. Hereinafter cited as COFI Papers.

25b. The Government proposes a new royalty formula which is promptly rejected by the Timber Industries Council (TIC).

In contrast to what was being suggested by the lumbermen, Deputy Minister G.R. Naden proposed a royalty tied directly to stumpage value (rather than average wholesale price) after it had been jointly decided upon what basis such value could be calculated, and what proportion should go to the government. Managing director of the TIC, William McNeill, promptly denounced this proposal as "advanced" and "utopian" legislation inimical to the attraction of outside capital and unfit for a young province with a "mere handful of people." Eventually the TIC accepted a royalty based on stumpage provided that the questions of how to determine it, and what portion belonged to the Government, could be settled to the satisfaction of the timber holders. The problem would be wrestled with for the next two years.

Gray, p.34. The primary source for this excerpt is a "Report of the Royalty Committee by William McNeill to meeting of Timber Industries Council directors," 9 March 1923, COFI Papers, Box 44, file 5.

25c. The arguments concerning the formula for royalty based on stumpage:

Up to this point, the point of view of the industry was that licensed timber was private property for which timber holders had often paid a substantial price in private transactions over and above annual rental fees. With such large investments sunk into their holdings, licensees found it unacceptable, at the time of cutting, to have to purchase from the government in the form of royalty, timber which they already regarded as their own.

1923

From the government's point of view, possession of a timber licence gave the holder only a right to cut what was still Crown timber. Annual licence fees were a form of ground rent....

In subsequent negotiations, the TIC seemed reluctantly to accept the government's conception. But the lingering notion that royalties were really only another form of taxation, rather than a commercial transaction, added to the fact that many timber holders had large accumulated investments in their licences, stood in the way of an agreement.

Gray, p. 35.

25d. Timber Industries Council proposes a royalty formula.

Timber agent and Timberholders' Association council member, C.S. Battle was the most outspoken proponent of the TIC position. He advocated establishing an arbitrary average stumpage value of $2.00 as a base rate. The government's portion of any increment over that was to be...25 percent. Furthermore, according to Battle, future stumpage values were to be based on combined private and government timber sales over the preceding quinquennium. And, finally, the TIC wanted recognition of the private purchase price of timber licences as a legitimate cost factor in the determination of a royalty formula.

Gray, p. 35. The primary source of the above excerpt are the "Minutes of meeting of Timber Industries Council Royalty Committee (Battle, Hendry, Logan and McNeill) with Lands Department officials (Naden, Caverhill and Peterson)," 12 April 1923, COFI Papers, Box 38, file 6.)

25e. The Lands Department offers as a counter-proposal, a royalty formula which recognizes rent and forest protection taxes as legitimate cost.

The Lands Department...maintained that in the past royalty had varied between one-half and one-third of stumpage value. Rather than a percentage increase over $2.00, officials proposed a one-third government share of total stumpage value to be revised downward in 25 or 30 years if the burden of accumulated carrying charges proved to be excessive.[1] In reversal of the Department's 1914 position, such charges (rent and forest protection tax) were now to be recognized as legitimate cost. But the price at which licences were purchased privately was in no way to infringe on the government's equity.[2] Furthermore, in determining stumpage values the Department...wanted to use along with previous private and government timber sale prices, the appraised value of timber actually to be worked during the subsequent royalty period. Thus, the government's royalty share would bear a closer resemblance to the real appreciating value of its equity. Such appraisals would require the assessment of operating costs of actual camps and mills by Forest Branch officials.

Gray, pp.35-36. The primary sources for the above excerpt are:

[1]Timber Industries Council (TIC) memo on Forest Branch draft of proposed royalty bill, enclosure to TIC to Poole, 12 December 1923, COFI Papers, Box 44, file 5 and Minutes of meeting with Minister of Lands and his Royalty Committee, together with joint committee of the TIC and Mountain Lumber Manufacturers' Association, 28 November 1923, COFI Papers, Box 38, file 6.

[2]Minutes of meeting of TIC Royalty Committee with Lands Department officials, 12 April 1923, COFI Papers, Box 38, file 6.

25f. An apparent misunderstanding by Timber Industries Council on definition of gross stumpage value further complicates efforts to create an acceptable royalty formula.

The issue [of a settlement to the royalty question]...was complicated when "L.R. Andrews, Secretary of the British Columbia Loggers' Association, revealed to the TIC that according to the Department's definition used in its 1923 draft bill, gross stumpage value was to be the sum of the assessed market value for standing timber, plus whatever purchase price for that timber was due to the government as royalty.[1] If the average sale price of licensed standing timber was determined to be $3.00, royalty would not be one-third of that, or $1.00, as the lumbermen had assumed, but rather $1.50, or one-third of a gross stumpage value of $4.50 ($3.00 plus $1.50).[2]

Gray, p. 41. The primary sources for above excerpt are:

[1]TIC memo on Forest Branch draft of proposed royalty bill, enclosure in TIC to Poole, 12 December 1923, COFI Papers, Box 44, file 5.

[2]Memo of P.Z. Caverhill, "Department of Lands Case for Adjustment of Royalty," PABC Add. Mss. 3 vol. 38, file 6, #77-78.

25g. Chief Forester, P.Z. Caverhill, attempts to conciliate industry by offering a limited recognition of the private purchase price of Old Temporary Tenures.

In an attempt to conciliate the industry, Chief Forester P.Z. Caverhill finally agreed to recognize the private purchase price of licensed timber up to 50 cents per thousand feet as a legitimate cost to be written off stumpage value.[1] Moreover, he revised downward the recommended immediate increase for 1925 so that it averaged only one percent over the previous period.[2]

Gray, p. 42. The primary sources for the above excerpt are:

[1]Memo of P.Z. Caverhill, "Department of Lands Case for Adjustment of Royalty," PABC Add. Mss. 3 vol. 38, file 6, #76.

[2]Memo of P.Z. Caverhill, "Department of Lands Case for Adjustment of Royalty," PABC Add. Mss. 3 vol. 38, file 6, #85-88.

1923

25h. The Timber Industries Council is opposed to a royalty that reserves a one third share for the Crown.

The sentiment of the meeting, but with one exception, is against the one-third royalty. For instance: Take a man today whose timber cost him form 50 cents to $1.00 per M. fifteen years ago,-the interest on the money and the taxes paid since that time will amount to a great deal, more than one thinks. Now to carry that for another long period with interest and taxes to say nothing of the fire risk during this whole period, and, then for the Government to take one-third of the value of his property, I am here to tell you that it is rather harsh, and will not appeal to an investor on the same ratio that timberland does in California, Oregon and Washington....

C.S. Battle of C.S. Battle Timber Company, Vancouver to McNeill December 13, 1923 COFI Papers, Box 44 File 5.

25i. At the close of 1923, the proposed Royalty Act is not brought before the legislature for fear of its being defeated.

On Monday morning December 17th the Minister of Lands notified me that the Executive Council of the Government of British Columbia had decided not to bring in the proposed Royalty Act at the session of the Legislature which has just closed. The reason given being that on account of the hostility of the Opposition and of certain members of the Government Side, it could not be put through the house.

I made a strong protest that a promise had been made that the Royalty Act would be passed....

I was informed that the Opposition took the view that the present Royalty Act should not be altered and that they had in preparation for debate on the Royalty Act, if it had been brought down, certain figures which they would attempt to show that it would mean the loss of Seven millions of dollars in revenue to the Crown in the right of the Province of British Columbia, if the present Act was amended. The Government knew of this state of affairs and made their decision not to risk defeat of the proposed Act, especially in the view of the fact that the temper of the house had been thoroughly roused by the various debates on the export of logs.

Letter from W. McNeill (President/Manager of the Timber Industries Council) to I.R. Poole, 28 December 1923, COFI Papers, Box 44, File 5.

1924

26a. Since the proposed bill had never been made public, William McNeill of the Timber Industries Council regards the royalty question as completely open to a better settlement.

Since the proposed bill had never been made public, McNeill regarded the royalty question as completely open to a better settlement "than the one upon which we were forced to agree last year."[1] Between March and May, the British Columbia Lumberman ran a series of articles by McNeill entitled " The Timber Royalties Question," the purpose of which was to inform the industrial and business community in general of the forest industry's position. In brief, McNeill claimed the 1914 Act was ruinous since it failed to recognize adequately inflated costs of production. Despite the popular conception, timber holders were not making any money on investments, many having abandoned their licences. And mills had made virtually no return on investment in 1921 or 1922. Meanwhile, the industry contributed one-third of provincial revenue, one-half of all invested capital and one-half of all wages. The least it could expect was a fixed royalty for the same duration as licence rentals were fixed until 31 December, 1954.[2]

Gray, p. 39. The primary sources for above excerpt are:

[1]McNeill to Poole, 25 July 1924, COFI Papers, Box 44, file 5.

[2]British Columbia Lumberman, 8 March 1924, pp. 24-25, 8 April 1924, pp. 24-25, 8 May 1924, pp. 24-25. A fourth article summarizing the Royalty question was published to coincide with a public meeting on the issue on 3 September 1924 British Columbia Lumberman, 8 September 1924, pp. 20-21.

26b. Pattullo's opening remarks to a public meeting on Royalties.

[T]he act is now working out differently from what was anticipated, by reason of the fact that the royalty is based upon the selling price of lumber, it did not take into consideration the change in value of the dollar, nor the difference in the relationship of the selling price of timber and the cost of production; with the result that the timber industry is now faced, beginning in the period of January first next, with an increase in royalty, if carried out under the present act, that will be at least three times the present royalty that is being collected.

Proceeding of "Public Meeting re. Timber Royalty Act, 1914, held at the Parliament Buildings, Victoria, B.C. on Wednesday, the 3rd day of September, 1924, at 10 a.m.. Hon. T.D. Pattullo presiding," unpublished typescript PABC GR889, p. 2. Hereinafter cited as Public Meeting 1924.

1924

26c. Mr. McNeill of the Timber Industries Council describes the industry's view of the 1914 Timber Royalty Act.

[T]he lumbermen, during negotiations of 1914, when this act was being considered, gave a quasi consent to its provisions; although some of them were in doubt...because of the new principles involving royalty rates, which that act brought into practice. And these new principals were these, that up to 1914 the royalty rate was 50 cents per thousand feet, and was based on the principle of that value that belonged to the people of this province. In 1914 the new Royalty Act established several new principles. In the first place, it quite arbitrarily sent up the royalty rates from 50 cents to 85 cents.... It established what had never hitherto been established in the province, a classification of both grades and species of our British Columbia timber. So that we paid 85 cents per thousand feet on the number one and number two grades of fir and cedar and spruce and 50 cents on the number three grades of these species, and on all hemlock.

The lumbermen of that day were quite willing to try out, also, the new principle that the Act established, that instead of basing the royalty rates on the value of standing timber as that value accrued, and as the proportion of that value became determined, to the people of this Province; they were quite willing to try out this new principle, namely, royalty rates based on the selling price of lumber.

Public Meeting 1924, p. 7.

26d. McNeill describes the weaknesses of the 1914 Royalty Act.

The biggest reason, perhaps, for the weakness of the Act, lies in this fact, that it takes no account whatever of the cost of production. It practically and solemnly says this, that when your price of lumber goes beyond $18 [18$ per Mfbm was the level at which the province would increase royalty rates], no matter whether it is due to increased cost, or not, that anything above the price of $18...is to be considered as net profit. And, piling one irrational absurdity onto another, it says that the profits are not to be judged by the difference between price and cost, but it does say that the profits are to be judged by the difference between price and what today is an absolutely arbitrary meaningless thing called $18.

[I]f this Act is not amended by January first, 1925, you are going to increase the royalty rate due to the people of this province from 50 cents to something like $3.85 on number one and two grades...or an increase of over 700 per cent in the royalty rate, in a period like something like 12 years. The price of lumber at its best, in that time has only doubled."

Public Meeting 1924, p. 9.

1924

26e. Mr. McCaffrey, from Prince Rupert, regarding the effect of the Royalty Act on capital investment in Northern British Columbia.

[W]e are pioneering an industry, and we are endeavoring to get capital into that country [Northern British Columbia] to develop the lumber business. And in doing that we find that this Royalty Act is a hard thing to get over. We would appeal to you in particular that the changing of this act, or any other act, in five year periods is not attractive to capital. I would stress that point as far as we are concerned. That in building an industry, a mill of any description, capital coming in wants something more definite than a law...governing a product which can be changed in five years or such a period.

Public Meeting 1924, p. 17-18.

26f. Mr Hamber (President of the Timber Industries Council) gives the industry view of the present rate of royalty.

If I asked you today, Mr. Premier, whether you will let us pay no royalty whatsoever, and go on manufacturing, and let your auditors ascertain our income, and tax us 25% of our net profits--I would suppose you would say 25% of the net profits looks like a very large percent. Now, gentlemen, we would jump at that under the circumstances now existing.

Public Meeting 1924, p. 20.

26g. Premier Oliver outlines what any changes to the timber royalty act should try to achieve.

[T]he main point for consideration right at the present time is to find that equitable position which will protect the people of the Province and at the same time render you (lumbermen) a fair measure of justice and security for your investments.

Task Force, 1974, p.16 or Public Meeting 1924.

26h. Premier Oliver states what he perceives as the original reasons for establishing the Timber Royalty Act in 1914.

Premier Oliver during a public meeting at the Legislature:

I think it was about 1903 or 1904 when a very strong agitation was got up that in order to induce capital to come into the country it was necessary to have a more permanent security in the timber. And I can remember when the Legislature increased the term of the timber licence ... Then... in 1914 Legislation (which fixed royalties on a sliding scale) was passed--that legislation, in my opinion, was never passed at the instance (sic) of the

Government...but passed at the instance of the timber holders who had invested their money in the timber; and the Royalty Act that you are now decrying so much today, is, I may say, the very legislation which some of you men present here today asked for.

Task Force, 1974, p.22 or Public Meeting 1924.

26i. Premier Oliver argues against offsetting the costs of speculation against the value of timber.

[A]re the timber holders today placing that speculative value, which they have probably paid to obtain the possession of these timber licences--are they placing that as an offset against the cost of production? Because if you are, I want to point out to you that the public, the people of the Province, the original owners of the timber, (have) got no interest in that speculative value of the timber as it passed from one speculator to another....

Task Force, 1974, p.25 or Public Meeting 1924.

26j. Mr. Pattullo claims that one-third of the stumpage value is the prevailing share taken by governments in the rest of Canada.

Mr. Lawson reported that Mr. Pattullo had phoned him and...stated that his Department had received a number of communications from different portions of Canada to show that the proportion of 1/3 of the stumpage value was prevailing, and that he thought that this proportion should be a fair one for this Province.

A discussion took place on whether the proportion of 1/3 was to be taken on the gross stumpage value, which would exclude royalty rate.

Minutes of the Meeting of the Royalty Committee 11:15 A.M. Tuesday September 30, 1924 Club Room--Metropolitan Building, Vancouver COFI Papers, Box 8, File 6.

26k. Shelvin Carpenter & Scanton Company Limited, in a letter to the Timberholders' Association of B.C., utters the popular belief that timber values will no longer rise.

"Personally, I am quite pessimistic on timber values in British Columbia, and I doubt if they ever will be any higher than they are now, and may possibly be lower."

Letter to Wm. McNeill, Secretary of the Timberholders Association of B.C. from Shelvin Carpenter & Scanton Company Limited, Minneapolis, 20 October 1924, COFI Papers, Box 44, File 5.

1924

26l. American investors are disturbed by the uncertainty that exists in British Columbia over royalty policy.

Referring to two American lumber companies: [F]rom all I can learn they are not satisfied with conditions on which to base a very large investment. It seems that all the laws of the Province are in a sort of state of flux and have not settled down to any definite, workable policy on which the foundation of investment will securely rest.

Letter to Wm. McNeill, Secretary of "Timberholders Association of B.C." from Shelvin Carpenter & Scanton Company Limited, Minneapolis October 20, 1924 COFI Papers, Box 44, File 5.

26m. According to the Timber Industries Council, if royalty should be included as a part of stumpage it should be no more than 25 percent of gross stumpage value.

"Mr. Lawson was instructed to state our views with regard to...the inclusion of royalty in stumpage value--should be combined with the question of percentage. Our position is, that if royalty is to be added to stumpage value, then the percentage must not exceed twenty-five percent. In other words, that the rates established by the Government shall not exceed twenty five percent of the gross stumpage value. But in no case shall the increase in royalty exceed twenty five percent of the increase in the net stumpage value since the last increase in royalty. This to prevent pyramiding."

Meeting of the Royalty Committee and certain members of the Board of Directors including Representatives of the Mountain Lumber Manufacturers Association, Victoria 27 October 1924, COFI Papers, Box 38, File 6.

26n. The Royalty Committee abandons its efforts to establishing a royalty formula. There are two accounts of the same meeting.

The ammended minutes:

The draft as given to the Royalty Committee was discussed and it was found that a great many points in the Bill were not satisfactory either to the Department officials or to our own Royalty Committee.

Growing out of the discussion there evolved a suggestion that a royalty measure for a straight ten years, of two 5-year periods, with the royalty definitely fixed for each five year period, would perhaps give the industry the stability required and be acceptable to both sides as a compromise measure; although the committee still held to the suggestion and proposed remedy as set forth in our brief of November 24th.

Timber Industries Council of British Columbia Joint meeting of the Directors and of the Royalty Committee 10:30 A.M, 1 December 1924, COFI Papers, Box 38, File 6.

1924

26o. The original draft of the minutes:

Mr. Hamber told the Minister of Lands that the draft bill was not satisfactory.

After discussion, the Minister of Lands asked if the industry would be satisfied with a royalty period of ten years with the rates fixed for two 5-year periods. This principle was adopted by the Committee and adjournment was made for the purpose of allowing the Minister of Lands to see the Premier.

At 12 o'clock noon the Committee was called to the office of the Minister of Lands, who stated that the Government would be prepared to withdraw the present bill and to submit a Bill for a ten year period of royalty rates in two 5-year periods.

Timber Industries Council of British Columbia Joint meeting of the Directors and of the Royalty Committee, 10:30 A.M., 1 December 1924, Draft version of the minutes, COFI Papers, Box 38, File 6.

26p. An agreement based on arbitrarily fixed royalties is settled on.

With December and the end of the current royalty period upon them, it was necessary for both sides to arrive at some proposal to present to the legislature. As any agreement upon terms of a permanent royalty policy appeared impossible without further extensive negotiations, a decision was made to settle for a schedule of arbitrarily fixed royalties over two 5-year periods.

On the south coast, for example, rates were set at $1.35, $1.25 and $.75 for grades one, two and three lumber, to be increased to $1.65, $1.65 and $.95 in 1930.[1] The average coast royalty based on grade distribution of the cut would be $1.14 on 1 January, 1925, up...four cents per thousand from the previous period.[2]

Gray, p. 42. The primary sources for above excerpt are:

[1]Minutes of meeting of Timber Industries Council Royalty Committee and directors with the Minister of Lands, 1 December 1924, COFI Papers, Box 38, File 6.

[2]Minutes of meeting of Timber Industries Council Royalty Committee and directors with the Minister of Lands, 1 December 1924, COFI Papers, Box 38, File 6.

26q. The Timber Industries Council 1924 Annual Report describes the changes made to the Royalty Act.

The efforts of your Directors were successful in obtaining an amendment to the Forest Act of the Royalty rates beginning January 1st, 1925 which, was partially satisfactory as a compromise measure, and in obtaining a ten year period of two 5 year periods, in which the royalty rates are set forth and established, so that at least the industry knows for that period of time in a definite manner, what the royalty rates will be.

Timber Industries Council of B.C. Annual Report for the Year 1924, p. 2. COFI Papers, Box 38, File 6.

26r. An interpretation of the new royalty legislation:

While the timberholder did not gain the permanent stability he demanded, the amended rates did provide assurance to foreign capital of the Liberal government's willingness to comply with the needs of investors in the province's resources.

For the government, the new legislation guaranteed a slight, but steady growth in royalty revenue, but mainly because the total volume of timber cut was increasing each year. A one-third equity for the Crown appeared to be established, at least for 10 years.

Gray, pp. 42-43.

26s. The history of the royalty question from 1914 to 1924 written in the 1924 Annual Report of the Forest Branch essentially outlines the problems associated with fixing royalty rates over a long period of time.

The settlement of the royalty question was the premier event of the year in forestry. This perplexing question arose out of the "Royalty Act" of 1914, under which an attempt was made to fix the royalties payable on timber cut for a period of forty years in advance. At the time of passing this Act it was considered that advances in wholesale lumber prices would be almost wholly due to increase in stumpage values or that stumpage values would follow closely wholesale prices. The possibility of rapid increase in cost of production was not foreseen. Almost immediately after passing of this Act the outbreak of the World War completely upset most ideas on finance and we witnessed a rapid shrinkage in the purchasing power of the dollar, until in 1920 it was worth only 40 pre-war cents. This drove the cost of producing lumber in inverse ratio to approximately $30 per M.B.M.. Since 1920 readjustments have taken place and at present our dollar has increased to 60 pre-war cents. This means that the whole basis of production is still much higher than considered possible in 1914 and is likely to remain so for a long time to come. The old "Royalty Act" made no provision for these costs and would have taken as royalty a sum larger than the spread between the present cost of production and the value received for the sawn product."

Province of British Columbia, Report of the Forest Branch, Department of Lands for the year ending December 31, 1924. Hon. T.D. Pattullo, Minister (Victoria: King's Printer, 1925), p. 5. Hereinafter cited as Forest Branch Annual Report 1924.

1924

26t. Forest Branch's Annual Report describes the new Timber Royalty Act as providing reasonable stability for industry and securing all legitimate revenue for the Crown.

The new "Royalty Act" breaks away from the principle of a long period. Since it is only by costly appraisal of stumpage values that a true basis of future values can be found with any certainty, it definitely fixes a definite royalty for ten years only, after which the question is left entirely open to be settled as conditions then dictate. For five years the average royalty is approximately 98 cents and there after for the second five-year period an increase approximating 25 per cent. is provided. This Act then provides reasonable stability for development of the industry. It secures all legitimate revenue for the present and leaves no impediment to overcome when the question comes up for consideration ten years hence.

Forest Branch Annual Report 1924, p. 5.

26u. The provisions of the 1924 Timber Royalty Act:

The "Royalty Act" of 1924 established royalties for two five-year periods, 1925-1929 and 1930-1934. It provided for an increase of 30 cents per thousand feet on No., 1 and No. 2, and 20 cents per thousand on No. 3 and Hemlock and Balsam, in the second period. These increases were based upon an expected increase in the value of timber and timber products, which did not materialize.

Historical Review 1914-1937, p. 1.

1929

27a. A lawsuit is launched against the timber tax.

Revenue shows a drop of $122,000 due very largely to litigation in respect to the timber-tax imposed under section 58 of the "Forest Act." The case is still before the Privy Council....

Province of British Columbia, Report of the Forest Branch, Department of Lands for the year ending December 31, 1929. Hon. T.D. Pattullo, Minister (Victoria: King's Printer, 1929), p. 27.

27b. The changes to the royalty rates as set out in the Timber Royalty Act:

At the end of the first royalty period (in 1929) the Loggers' Association convinced the Government that the proposed increase was not justified and an extension of one year at existing rates, was granted.

Historical Review 1914-1937, p. 1.

1930

28a. The Province takes on the administration of Timber Berths with the transfer of the Dominion Railway Belt back to the Province.

The mainland Railway Belt that the Province conveyed to the Dominion in aid of railway construction was reconveyed back to the Province in 1930.... The Dominion had...granted timber harvesting rights in the form of Timber Berths in the Railway Belt, and these were inherited by the Province and have since been administered by the Forest Service as one of the forms of old temporary tenures.

Task Force on Crown Timber Disposal, Forest Tenures in British Columbia. (Victoria, B.C.: Queen's Printer 1974) p. 14. This is a background paper prepared by the Task Force for the first report. Hereinafter cited as Forest Tenures 1974.

28b. The Dominion Rail Belt is returned to Province and made subject to timber royalties.

[P]ursuant to the findings of a Royal Commission, the Dominion returned to the Province the Dominion Railway belt and the Peace River Valley block, subject to any alienations made during its ownership. Cutting rights over timber areas had been granted and these so-called "timber berths"are now subject to Provincial administration.... The timber cut on these berths is subject to a royalty of $1 per M. feet.....

Sloan Commission, 1945, p. 87.

1931

29a. Royalty rate reduction:

In 1931 royalty rates on No. 3 and on Hemlock and Balsam were reduced 15 cents.

Historical Review 1914-1937, p. 1.

1933

30a. Royalty rate reduction:

Report states that there was a 25% reduction in ground-rentals and a 15% reduction in royalties. The reductions are apparently in response to the depression....[I]t must be remembered that about nine months of the year was that period at the very bottom of the depression....

Province of British Columbia, Report of the Forest Branch, Department of Lands for the year ending December 31, 1933. Hon. A.W. Gray, Minister (Victoria: King's Printer, 1934), p.27.

1934

31a. Royalty rates are restored to original levels.

Prices in general were slightly better than last year, but log-production costs were up. A substantial improvement in lumber prices must take place before the industry can earn reasonable profits.

Elimination of the 15% reduction in royalty took place on April 1st 1934. The 25% reduction in rentals was also eliminated.

Province of British Columbia, Report of the Forest Branch, Department of Lands for the year ending December 31, 1934. Hon. A.W. Gray, Minister (Victoria: King's Printer, 1935), pp.3 & 24. Hereinafter cited as Forest Branch Annual Report 1934.

1936

32a. Chief Forester E.C. Manning argues that royalties were never intended for use as government revenue. Royalties are forest capital which should be used to maintain productive forests.

The Commissioners [referring to the Fulton Commission] made very clear that forest royalties were not revenue, but forest capital, and that the maintenance of this capital in a productive state was the first claim upon these royalties. The maintenance of our forests in a productive state is the very keystone of our forestry structure; it is forestry.

For twenty-five years we have been largely neglecting this advice given by the commission. Why? First, in the earlier years, because of the lack of knowledge of measures necessary to keep our forests in a productive state. This excuse no longer exists. Second in the later years the Forest Service warnings lacked conviction in a period of depression when there were so many demands on the public purse. In this year of increasing forest revenue we desire to be very definite in some of our statements. Third, overshadowing all other factors is the lack of public support of adequate forestry measures because of failure to realize the real importance of our forests in the economic life of this Province and a false interpretation placed upon the extent of our forest resources.

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1936

[The plea for royalties to be put back into the forests is repeated in very similar form in subsequent reports to the Legislative Committee in 1938 and 1939.]

Evidence given by Chief Forester, E.C. Manning before the Forest Legislative Committee November 3, 1936, p. 2-3. in Reports presented to the Forestry Committee of the Legislative Assembly by the Chief Forester 1936-1943, PABC GR 1242. Hereinafter cited as Chief Forester Reports 1936-1943.

1938

33a. There is a concern in the forest industry and within the Forest Service over the proposed royalty rate increase.

A historical review of royalty rates from 1914 to 1937 expresses concern that there is a "provision whereby royalties are to be increased 30 cents on No. 1 and No. 2 and 35 cents on No. 3 and Hemlock and Balsam is still on the Statute books although at no time has the average selling price of logs (all species) been within two dollars of the average price realized in 1924."

Historical Review 1914-1937, p. 1.

1950

34a. The recommendations of the 1945 Sloan Commission that the royalty exempt E & N Railway Land Grant be taxed in lieu of royalty is implemented.

In 1945 Sloan suggested that since E & N land was exempt from royalty, while it remained in possession of the rail company, it would not be unjust or inequitable to impose a special tax on the purchasers of E & N timber. Sloan suggested the tax should approximate prevailing rates of royalty. As a result of these recommendations the "Esquimalt and Nanaimo Belt Land Tax Act was enacted by the Legislature in 1950, making the lands within the Land Grant, as and when they were alienated from the Company, liable to taxation at the rate of 25 percent of the actual assessed value at the date of alienation; the assessment to include the value of the timber.

Sloan Commission, 1956, p. 22.

1955

Excerpts from the testimony of the 1956 Royal Commission relating to the Forest Resources of British Columbia:

35a. Mr. Orchard tells to the Sloan Commission that it is doubtful whether government has the right to collect royalty on second growth on Crown grants.

The Crown claims royalty on second growth on Crown grants; in principle

1955

exactly why I can't tell you, and I am doubtful whether we should. Nobody knows what was in the mind of the Legislature when they first put on royalty. If it was an interest in the productive capacity of that land retained, then the principle of charging on second growth is valid. If it was an interest in the timber that was a free gift of nature and was on the land when they got it, then it would extend only to the original stand."

Sloan Commission Testimony, 1955, pp. 17827-28.

35b. Mr. Walter Charles Koerner President of Alaska Pine and Cellulose Limited says no royalty should be charged on second growth.

"Royalties should not be imposed on second growth forests. They were originally conceived as the Government's equity in the virgin forest, but, added to other taxes on the new crop, they may be a deterrent to the practice of private forestry."

Sloan Commission Testimony, 1955, p. 12273.

1956

Excerpts from the Final Report of the 1956 Royal Commission relating to the Forest Resources of British Columbia:

36a. Chief Justice Sloan says the complexity and variety of tenures that now exist challenges the ability to be fair.

Successive forest administrations and commissions of inquiry into forest policy have lamented [the] increasing complexity in tenure arrangements. The Royal Commission of 1910, after reviewing several forms of Crown grants and temporary leases and licenses then existing, stated that "the holders of timber land should receive as far as possible equal treatment at the hand of the Government" and made a variety of recommendations toward that end. (Fulton p. 46) In 1957 the third Royal Commission, recalling that objective and quoting government statements which echoed it, observed "Forty five years later, uniformity of tenure has not been achieved; in fact there are probably more varieties now than then.

Sloan Commission, 1956, p. 31.

1956

36b. Chief Justice Sloan claims that the forest policies (regulations and tenures) inherited from the past were not designed with thought to the generations to come. They were meant to serve the needs of a particular era.

[In the years following 1865,] cutting rights took various forms and were subject to varied conditions. It was an uneven and somewhat complex development motivated by conditions thought impelling at the time these various forms of tenure were devised. To conclude that the earlier settlers, who had a hand in framing the forest laws and policies of those days, were, in so doing, deliberately thinking in terms of generations ahead is, I think with respect, to attribute to them an unwarranted prescience. Early administrations were, in my view, motivated by the immediate objectives important to the era in which they lived. They were confronted with the critical necessity of obtaining Crown revenue and of finding means to encourage the utilization of forest products. The developing pattern of Crown ownership was the consequential result and not the design of their pioneering policies. This opinion is, I believe substantiated when the history of these tenures is examined in some particularity.

Sloan Commission, 1956.

36c. Chief Justice Sloan outlines the flaws of the 1914 Royalty Act.

[I]t was...an escalator which ran in only one direction--up--and apparently without any provision to offset rising costs against increasing prices. No provision seems to have been made for a reduction in royalties on a falling market.

Sloan Commission, 1956

36d. Chief Justice Sloan recommends that the calculation of royalty rates be according to a formula.

No evidence was presented to me as to the adequacy of the present royalty rates. The terms of the licences at time of acquisition provided that the rates should not be fixed, but adjustable in accordance with values at the time of cutting.

Developments in timber-disposal policy affecting timber sales and management licences provide for later adjustments in original stumpage rates by means of a formula, so it would not be inconsistent to provide a formula for adjustments in royalty rates and thus remove at least part of the uncertainty as to these rates, which is a handicap in economic planning.

Since timber-sale stumpage rates in the aggregate by districts have themselves taken account of changing conditions, affecting values and costs of production and are a very large part of the standing-timber market, the proposed formula should relate to them.

1956

Sloan Commission, 1956, pp. 450-451.

36e. Chief Justice Sloan observes that royalty rates affect the timing of cuts.

[R]oyalty rate will be one of the factors affecting decisions as to [the] time of cutting.

Sloan Commission, 1956, p. 451.

36f. Chief Justice Sloan recommends that carrying costs be discounted from royalty charges.

The accumulated carrying costs, to which I have referred, were regarded fifty years ago as "interest" payable to the Crown on the value of timber reserved to the licensees. Nevertheless, the Crown has had the benefit of these sums, and it would be manifestly unfair to disregard them in establishing a royalty rate today comparable to stumpage payable on present timber sales which have contributed nothing to the Treasury prior to sale. Many present licence-holders have paid much more than the sum of these accumulations for their timber which, through the fifty years, has passed down a chain of owners. Such transactions were affected by many factors, such as the relative necessities of the then owners; the purpose, whether for immediate cutting or as a reserve to secure future supply for some large conversion plant and the economic conditions at the time of transfer, including the vulnerability of this class of tenure to increases in rates of royalty. Nor can the risks involved in holding vulnerable property for half a century be ignored. Through the years thousands of temporary tenures have reverted to the Crown after years of payments without any cutting return to the investors.

Sloan Commission, 1956, p. 451.

36g. Chief Justice Sloan believes a royalty formula should be adjustable in accordance with broad economic fluctuations.

The objective should be to establish a formula for royalty adjustable in accordance with broad economic fluctuations so as to make the burden comparable, after allowing for the factors I have mentioned, with that of other forms of timber ownership of Crown timber.

It is logical that as the years passed, and the annual payments to the Crown accumulated, the percentage relationship of royalty to current stumpage rates should diminish. It represents the unpaid balance of the original agreement.

Sloan Commission, 1956, pp. 451-452.

1956

36h. Chief Justice Sloan concludes that royalty and stumpage are equivalent.

[L]icence royalties were originally intended to be, and were called "payment" for the timber. That is, they are the equivalent of stumpage prices; it is therefore relevant to compare them with current stumpage rates.

Sloan Commission, 1956, p. 452.

36i. Chief Justice Sloan recommends a royalty formula approximating 20 percent of stumpage.

[Prior to outlining his formula, Sloan makes comparison between royalty rates and stumpage rates in 1948 and 1955 on both the Coast and in the Interior. He observes that the royalty ranges from approximately 20 to 30 percent of stumpage.]

I suggest that the average stumpage rates be calculated for every species, as indeed it is now, and that during the ensuing year royalty be charged at a figure in the reasonable proximity to 20 percent of those rates, by species, on each scale of royalty-bearing logs originating within in each district. This should not apply to those tenures which carry 50-cent royalty. That rate would remain the same until the old-growth timber has been cut.

Sloan Commission, 1956, p. 452.

[With the above formula as a basis, Sloan recommends that negotiations take place between representatives of the timber owners and the Forest Service as to the exact percentage to be adopted and whether it should differ between the Coast and the Interior.

Sloan Commission, 1956, pp.452-453.

36j. Chief Justice Sloan believes royalty should only apply to old-growth timber on Crown grants.

[Royalty in its modern] application...is used to mean, in essence, part of the price chargeable for Crown timber payable when the timber is cut. It represents in part the unearned increment of old-growth timber reserved to the Crown. In my opinion, once that old growth is liquidated the obligation of the Crown grantee to pay royalty to the Crown is extinguished as the last old-growth tree falls.

Sloan Commission, 1956, p. 453.

1961

37a. New royalty rates established:
A royalty rate was established for lodgepole pine, poles, piling and crib timber.

Forest Branch Annual Report 1961, p. 11.

1965

38a. Royalty on timber berths is amended.
The rates of royalty on timber berths were amended

Forest Branch Annual Report 1965, p. 12.

1968

39a. An increases in royalty rates is partly responsible for record financial returns.
[[T]h]e financial return to the Forest Service climbed to record proportions. While a significant portion resulted from statutory increases in the rates of timber royalties, forest protection tax and timber berth rentals and fees, the bulk of the additional revenue was from timber-sale stumpage.

Forest Branch Annual Report 1968, p. 51.

Timber-berth rentals and fees increased tenfold as the rates on these old Dominion tenures were brought into line with those charged on timber licences, timber leases, and timber sales.

Forest Branch Annual Report 1968, p. 51.

1969

40a. The 1969 Annual Report of the Forest Service Branch observes that cutting increases on royalty bearing tenures when stumpage prices are high.
Timber royalties increased 27.7 percent to $6, 329,417 as operators attempting to avoid high stumpage rates apparently turned to cutting where only royalties applied.

[Various versions of the above reference appear periodically in the Annual Reports when the market for lumber is depressed.]

Forest Branch Annual Report 1969, p. 47.

1974

Excerpts from briefs to the Task Force on Crown Timber Disposal:

41a. Canadian Forest Products argues that carrying charges must be recognized as a form of prepayment to the Crown.

The acquisition of timber licences and berths represents a substantial investment by our company. In addition to this initial investment, since acquisition we have paid annual rentals, fire protection taxes and land taxes. These carrying costs represent a form of prepayment to the Crown, to which must be added the interest on this prepayment up to the time that the timber is cut and royalty paid. The Company must also bear the cost of interest, compounded, on the cost of the initial investment until such time as the timber is cut.

"Brief submitted by Canadian Forest Products Limited to the Task Force on Crown Timber Disposal." p. 8. found in "Department of Lands, Forests, and Water Resources, Task Force on Crown Timber Disposal PABC GR 348, Box 1, File 12 (Hereinafter cited as Task Force Papers) . Hereinafter cited as CFP Brief 1974.

41b. Canadian Forest Products argues that carrying costs and risks involved in holding timber should be considered before establishing a royalty comparable to the stumpage paid on present timber sales.

The Crown has had the benefit of the accumulated carrying costs since the date of issue of the licences, and it would be obviously unjust to disregard these costs in establishing a new royalty rate today comparable to stumpage paid on present timber sales which have contributed nothing to Provincial revenues prior to sale of the timber. In addition, there should be some consideration for the risks involved to the licensee in holding this timber over such a long period. Risk of loss due to fire, insects and disease, as well as exposure to deletion by means of ecological reserves, parks and permanent wildlife corridors cannot be ignored.

CFP Brief 1974, p. 8.

41c. Canadian Forest Products argues that the changes that have occurred since the Fulton Commission have interfered with their ability to realize the full value of the annual rental payments.

In regards to Fulton 1910: "during each year of the lease, the lessee has received full value for the rental paid by him;...the fact that the lessee may have paid rentals for 30 years does not put him in any better position or confer on him any rights than those he had after payment of the first year's rental.

That was probably a fair argument at that time, but restrictions imposed since that date do not permit the licensee to exercise that option. Those licences within a Tree Farm Licence are subject to the same restrictions of volume and location cut as the Crown timber in the Tree Farm Licence and the right to cut

must be authorized by an approved cutting permit issued annually by the Forest Service. Similarly, timber licences and berths outside the Tree Farm Licence must have an approved cutting plan which adheres to the B.C. Forest Service Guidelines, with provision for leave strips, fire breaks, game corridors and deferment periods. We could not exercise the full option to cut and because of this, the conclusions reached by the 1910 Commission are not valid today.

CFP Brief 1974, pp. 8-9.

41d. Canadian Forest Products argues they are paying the equivalent to stumpage already when carrying charges are factored in.

We feel confident...that if total charges on timber licences and berths (rentals, taxes, forest protection taxes, interest on payments, and effect of the devaluation of the dollar over time) were allocated to such timber as it was (and will be) cut, then, after adding the cost of the royalty at the time of cutting, the total cost will approximate stumpage over a representative period of time.

CFP Brief 1974, pp. 10-11.

41e. Council of Forest Industries (COFI) argues that the Fulton Commission's recommendations are too far in past to allow valid comparisons to today.

The 1910 Commission considered that the lessees investment in an expired lease by way of rental was nil. However, they qualified this by suggesting rental, royalty and terms should place the lessee on an equal footing with persons cutting Crown timber. The conditions that led them to their conclusion about rental are not the same today. For one thing they envisioned (p. 72) that forest revenue should be reinvested in the forest. Had this been done considerable benefits to industry might have been argued as cancelling the rental debt. As it stands, the 1910 Commission is so far in the past that valid comparisons to today may be questioned.

"Council of Forest Industries Brief to Task Force, 8 February 1974," p. 2. Task Force Papers, Box 2, File 4. Hereinafter cited as COFI Brief 1974.

41f. COFI argues that the intent of Old Temporary Tenures was investment which implies equity as does the levy of a property tax.

Since their inception, the licences and leases have been regarded by all parties as "private" timber in which the investor had a distinct equity. Even the 1910 Commission report (p. 38) refers to timber being bought from the Crown and "paid for in installments that take the forms of rental and royalty." In the case of most of these tenures, there was no expectation, either by the vendor or purchaser that they were purchased for immediate liquidation. The intent was

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investment, implying equity therein. The property tax itself implies the holder has equity.

COFI Brief 1974, p. 2.

41g. COFI argues that the fact that Old Temporary Tenures were being managed at no direct cost to the Crown represents an understanding that the licensee had an equity to be nurtured.

Neither had immediate liquidation been physically or legally possible in all cases. Current guidelines for logging in many instances will delay liquidation, sometimes indefinitely.

Many of these tenures have been included in Tree Farm Licences and many more have been offered for inclusion in Tree Farm Licences which were not granted. This indicates that timber in them was not being merely held, but was being managed at no direct cost to the Crown--an indication of the understanding that the licensee had an equity to be nurtured.

COFI Brief 1974, pp. 2-3.

41h. Evans Products Company Ltd. reminds the Task Force that royalty is only one of the charges paid by forest companies.

The greatest misconception of all is the premise that the only charge to the company is the royalty rate. Originally the cutting rights were given as incentive and the value of the incentive was what enticed the purchase of berths and licences by companies and people over the years. The cutting rights had value to the holder in many ways, or the incentive would not have been there to hold the timber for so many years. The point is that a sizeable investment in dollars remains to be amortized for every cunit of standing merchantable timber a on licences and leases. The cutting rights were not purchased for speculative reasons, but were purchased to augment the timber supply for existing and proposed lumber mills and plywood plants. Investment had been made, and jobs created because of this tenure.

"Brief to the Task Force on Crown Timber Disposal by Evans Products Company Limited, 15 February 1974," p. 3. Task Force Papers, Box 2, File 11.

41i. A Task Force background paper explains that today's tenure pattern is a product of the past.

Today the tenure pattern is a mosaic of rights varying in vintage which, because they were designed under different circumstances to serve different objectives, vary substantially in the rights they convey and the obligations they exact.

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Task Force on Crown Timber Disposal, Forest Tenures in British Columbia: Policy Background Paper (Victoria: December 1974), p. i. Hereinafter cited as Task Force Background Paper 1974.

41j. Royalty bearing tenures effect industrial structure.

Two questions the 1974 background paper attempts to answer are: Does the tenure system promote efficient industrial structure? [I]s...the current mixture of tenure arrangements...neutral in its provisions for operating companies of different sizes and structures?

The old temporary tenures which are mostly held by the large firms have, in general, provided better timber at considerably lower prices than the tenures typically available to small operators. The large firms also acquired a large proportion of the Crown-granted timberlands which carry little or no royalty, and, like the old temporary tenures outside Tree Farm Licences are subject to much less demanding regulatory control. In many cases these more advantageous holdings are the result of judicious investments on the part of the holders. But the large size of many of these tenures, the historical pattern of consolidation of the holdings of large firms, and their associated manufacturing facilities have often made these tenures unavailable to smaller companies. Transfers of rights between large and small have thus been mostly one-way.

Task Force Background Paper 1974, p. 121.

Excerpts from the First Report of the Task Force on Crown Timber Disposal:

41k. The 1974 Task Force defines royalty.

The concept of royalty originated in British law as the share of natural resources reserved by and for the sovereign upon their exploitation, and in the course of history royalty has come to refer to a variety of Crown levies on both public and privately owned natural resources and, in addition, to devices by which private owners of other things ranging from mineral deposits to works of art and patents reserve for themselves a share in the value of their assets.

Task Force, 1974, p. 17.

41l. The Task Force concludes that the ultimate purpose of royalties has never been questioned.

Although timber royalties were often the subject of heated debate, the arguments have consistently centered on the level and form these levies should take--never on the ultimate purpose they were meant to serve.

Task Force, 1974, p. 15.

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41m. The Task Force defines the meaning of timber value.

The value of timber standing in the forest is measured by what it would be worth after it is cut and delivered to some market or utilization centre less the costs of harvesting and transport. this net value (gross value minus costs) or surplus is often referred to as the "unearned increment" or in economist jargon, as "economic rent." The cost must include, of course, a reasonable return to the operator's capital as well as his necessary operating costs in harvesting resources.

Task Force, 1974, p. 17.

41n. The Task Force outlines the benefits and disadvantages of royalties:

Royalties fixed in dollars per unit of wood are easy to administer because they require only a scale of the timber harvested. No information is required about the forest from which it was taken, nor of the costs of logging and transport--information that the early forest administrators could not easily obtain. Indeed the royalty that was applied for 25 years prior to 1914...did not even require identification of species and grades. The disadvantages of such a system were that it implied that all timber was of equal value, which of course encouraged loggers to take only the best timber, and it failed to recognize the timber in different locations varied in value because of differences in logging and transportation costs.

Task Force, 1974, p. 18.

Natural forests range from worthless to very precious, and so a fixed levy per unit of wood harvested from different tracts will inevitably extract an inconsistent fraction of the net value of timber. Even if royalty rates were fixed at a level that would extract the full net value of harvested timber in a given category on the average, all the timber of above average value would be underpriced and operators would incur a loss on the other half (and hence have no financial incentive to remove it). Apart from its obvious implications for efficient forest utilization, the system creates inequities among operators on forest stands of different quality.

Task Force, 1974, pp. 18-20.

Royalties fixed in dollars per unit harvested suffer also from inconsistency through time, as costs and prices change. Because timber values and harvesting costs change constantly and often sharply, fixed royalty rate cannot be expected to appropriate a constant share of the net resource value unless they are continuously adjusted.

Task Force, 1974, p. 20.

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41o. The Task Force concludes that private acquisition payments should have no impact on royalty rates.

Private acquisition payments are of no relevance to the present policy issue, except insofar as they indicate that resource rents are not being captured under the present royalty arrangement and are being capitalized instead in private market values. Private transactions in old temporary tenures were made in the full knowledge that the Crown reserved the right to adjust royalties ..in such a way as to protect the public interest as circumstances changed.

Task Force, 1974, p. 24.

Royalties have never, to our knowledge, been manipulated to take account of the private payments that have been incurred to acquire harvesting rights.

Task Force, 1974, p. 25.

41p. The Task Force argues that rentals and taxes are not payment for timber.

Rentals and taxes are levies which the lessee or licensee pays to retain his harvesting privileges--to harvest the timber or to retain it intact as a reserve for the future. They are not payment for timber itself.

Task Force, 1974, p. 25.

Annual rentals represent...payment for retention of harvesting rights, and holders have received full value for these payments through time.... While such payment may be regarded by the holder as an investment in his future timber supplies they do not diminish the public's equity in the resource. The argument that the capital value of these past payments should be allowed for in determining future royalties implies that the longer this timber is withheld from harvesting the smaller will be the public equity in it--a proposition which we cannot accept.

Task Force, 1974, p. 27.

41q. The Task Force notes that royalties are not taxes.

During recent decades , representations of the former Forest Council and its successor organizations have repeatedly argued that royalties should not be considered a tax to be adjusted according to the vissitudes of government revenue needs. The Task Force agrees with this argument insofar as we believe that royalties should reflect, instead, a consistent share in the varying unearned increment of public forest values.

Task Force, 1974, p. 39.

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41r. Summary of the Task Force report on Crown Charges for Early Timber Rights as it appeared in the Forest Branch Annual Report of 1974:

Its major recommendation comprised:

(1) Basing Crown royalty charges upon individual appraisals of the timber rather than the previous blanket royalty rates fixed by legislation for groups of species on a regional basis. The Change was to be effective September 30, 1974, and enabling legislation was approved by the legislature in the Forest Amendment Act 1974. The date of implementation , however, was left to the discretion of the Lieutenant-Governor-in-Council and was withheld pending an improvement in market conditions.

(2) Abolition of the forest land tax after the end of the end of the 1974 calendar year. (this provision depended on implementation of recommendation No. 1)

(3) Easing the burden of the special tax on logging profits...

Forest Branch Annual Report 1974, p. 13.

41s. Hon. R. A. Williams, Minister of Forests, agrees with the Task Force's recommendations on royalties but says he must reevaluate the timing of their implementation.

[Williams summarized the arguments of the Task Force in regards to royalties in the house and suggests by implication that they are the view of the government.]

"We've concluded, as a result of our work with the staff, that kind of timing was too ambitious and it would not be feasible to embark on something related to a stumpage appraisal system until the new year at best.

We therefore regard this as enabling legislation and the timing will be in the coming year. The degree of incidence in relation to stumpage appraisal is still to be determined as well."

Province of British Columbia, 4th Session, 30th Parliament Official Report of the Legislative Assembly (Hansard), Tuesday, May 21, 1974, Afternoon Sitting, Volume 5, Number 1, p. 3902.

Reaction to Task Force Report:

42a. Professor J. Harry G. Smith (UBC Faculty of Forestry) argues that the government reserved only part ownership in its timber.

I believe you neglected an important source in Bulletin No. 1 of the U.B.C. Faculty of Forestry written by Dean Lowell Besley in 1951. I expect that his

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analysis had some influence on the position taken by Chief Justice Sloan.... Besley maintained that "under its lease and licence system, the Province did not sell its timber outright, but reserved part ownership in this timber until such time as it was cut. It made this same reservation with respect to timber cut on Crown-granted timberland which the owner acquired after 1887." We should note that part ownership is seldom changed easily to 100 percent ownership which would be the result of implementation of your conclusions regarding assessment of royalty.

Letter from J. Harry G. Smith to Peter Pearse, 8 March 1974, p.2. Task Force Papers, Box 2, File 13.

42b. Professor Smith argues that the principle of royalty as the Crown's share in the production of the forest soil does not apply to Crown granted timberlands.

Besley also made the important observation that "the principle of royalty as the Crown's share in the production from forest soil which it owns does not apply to Crown granted timberland as it does to temporary tenures and cutting rights." It is obvious that the Crown no longer owns the timber on the temporary tenures since it has many years ago conveyed rights to occupy the land and to harvest the timber to holders of temporary tenures. All the Crown owns is the right to collect a royalty on timber and appropriate charges for use of the land involved. That successive Governments have viewed royalty as a part payment considerably less than half of stumpage is obvious in your figure on page 65.

Letter from J. Harry G. Smith to Peter Pearse, 8 March 1974, pp.2-3. Task Force Papers, Box 2, File 13.

42c. Professor J. Harry Smith quotes CIF brief in defining royalty as part payment for mature timber.

[Y]ou should note on page 9 of the enclosed copy of the CIF submission to Sloan in *1955 that "the Institute considers that royalty was imposed as part* payment for mature timber, deferred until logging."

This sentence comes immediately after "The original system of deferred payment in the form of royalty (at rates adjusted from time to time in accordance with economic conditions) should be maintained with respect to timber licences."

The report was widely debated before submission. It reflected a substantial body of professional opinions and there is an impressive list of names of those who made up the Section Brief Committees. Obviously, Mr. Sloan did hear something from informed professional foresters with regard to royalty and its meaning.

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Letter from Professor J. Harry Smith to Peter Pearse, 12 March 1974, Task Force Papers, Box 2, File 13.

42d. COFI President, G.L. Draeseke, discounts Fulton's recommendations because of 45 years of government policy that kept royalties low and because of the fact that government taxed the tenures as private property.
I think the recommendation that royalty be 100 percent of appraised stumpage is unwise. The report adopts the precedent of the Fulton report of 1910 and rejects the Sloan recommendation of 1956. While the Fulton Report may have been correct in its day, I think the Sloan approach was the correct one in 1956 because Sloan had in front of him two things which were not before the Fulton Commission.

(1) 45 years of government policy which kept royalty at a fraction of stumpage

(2) The fact that the government was taxing these tenures as private property with a capital value. On page 31 the Task Force says that this "tax is in our opinion inappropriate insofar as the taxed timber is the property of the Crown, while the taxpayer holds only the right to harvest it." While this opinion is consistent with their conclusions, by the same token actual taxation of these tenures for 25 years is inconsistent with their conclusion of charging the same stumpage as to someone who has not paid taxes.

In summary, to keep royalty well below stumpage for 65 years, and then to deny that there was such a right is unfair in my opinion. If it is unfair or even seems unfair, I submit it is unwise as government policy it will be one more reason for investment money, which is inherently cautious, to be reluctant about British Columbia.

COFI President G.L. Draeseke in a telex to Peter H. Pearse, 14 March 1974, Task Force Papers, Box 2, File 4.

42e. The President of COFI had anticipated that the Task Force would recommend royalty at 30 to 50 percent of stumpage not 100 percent.
I thought that the Task Force recommendation might be 30 to 50 percent of stumpage and I strongly urge you to consider some lesser percentage than one hundred.

COFI President G.L. Draeseke in a telex to Peter H. Pearse, 14 March 1974, Task Force Papers, Box 2, File 4.

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42f. COFI President, Gordon L. Draeseke, states that a royalty hike would undo an historical precedent.

I object in principle, to the recommendation that wood on early timber rights be charged for at the full current stumpage rate.

For many years, these early renewable timber tights paid rent, were assessed and taxed, bought, sold, and used as collateral just as any other item to which a right of property is attached. Historically, a precedent was set, and it would not be fair to change it arbitrarily and now charge the same as for timber on which the operator has paid not a cent in carrying charges.

"President's Report to Council of Forest Industries of British Columbia Annual General Meeting April 18 & 19," pp. 8-10. Task Force Papers, Box 2, File 4.

42g. British Columbia's Professional Foresters believe that the Task Force recommendations regarding royalties would undermine good forest management.

Council is disappointed with your interpretation of the historical record and with your recommendations. The recommendations would impose a regrettable penalty on good forest management where such was elected when the licensees were incorporated in the Tree Farm Licences. It would appear your report embodies a major concern with the forest as a source of revenue that seems to have overwhelmed your concern for good forest management. The Council believes if implemented your recommendations will not inspire the confidence of industry necessary to promote good forest policy and practices through cooperation and desire, which after all, is the aim of your Task Force and of all professional foresters.

Letter to Peter Pearse from A. Brookman Anderson President of the Association of British Columbia Foresters, 29 March 1974, Task Force Papers, Box 4, File 3.

42h. Don Mackenzie, General Manager of The Truck Logger Association, says a royalty hike is equivalent to expropriation.

A number of our members and a number of the independent sawmillers we work with have paid cash for the property rights to the timber on certain leases in question at full timber values at the date of purchase. We must, therefore, draw to your attention the serious implications for these operators if the proposed new changes are implemented. These companies are now faced with expropriation without compensation. It is this factor which ought to be avoided at all costs if the government in British Columbia is to retain creditability for respecting the integrity of the contracts that have evolved out of our history.

Don Mackenzie General Manager of The Truck Logger Association to R.A. Williams, 22 March 1974, p.2. Task Force Papers, Box 4, File 3.

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42i. A review of the First Report of the Task Force on Crown Timber Disposal in the Canadian Journal of Public Policy contends that arguments used by Task Force to prove their legal right to raise royalty were questionable.

For the year 1973 the use of appraisal values would have yielded $54.2 million in public revenues-an increase of more than $49 million over the old tenures! No wonder the Task Force presents a largely moralistic and legalistic case for the transition. The argument is that the Province has the legal right to reap all the surplus over costs for the public purse; they have always intended to do as witnessed by frequent change in royalty rates (p. 66); and thus that holders of the rights could expect no more. If one grants the legal rights of the Province, one might nevertheless challenge the evidence cited as to its real interest. Only eight changes in royalties were made between 1914-1973, and no change was made between approximately 1948 and 1968. Whereas royalties were in excess of 40 percent of appraised values up to about 1935, they were closer to only 20 percent of values from 1950 to 1970. A neutral observer could validly infer that the real intent of government has been a massive transfer of public equity into private lands.

Clive Southey (University of Guelph), Canadian Journal of Public Policy, Vol. 1, 1974, pp. 131-134. The underlining in the article is the Mr. Southey's emphasis.

42j. The Vice President of COFI argues that a royalty hike would be treated by the business community as a breech of contract by the government and will cause rather than reduce competitive inequities.

Our principal disagreement with the Task Force recommendation is its failure to recognize the equity of the holders of these tenures. Over a half century of administration has treated these tenures as property in which the licensee had an equity. They have, for many years, been taxed. They have been used as collateral at the bank. They have been bought and sold. They have been included along with Crown grants into Tree Farm Licences. Those members concerned feel very strongly that this history constitutes a recognition of thee as private property. The Task Force recommendation would wipe our the equity of the holders of these tenures. It is not only large holders who are affected. Small companies or individuals holding one or a few licences will be hardest hit.

If the Task Force recommendation (re: royalty) is accepted, it will be treated by the business community as a breech of contract by the Government. This will adversely affect investor confidence in our industry.

Setting aside all past investment and putting these tenures on an equal footing with Crown timber will cause, rather than correct, a competitive

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inequity by penalizing those companies and individuals who invested in these tenures in good faith and creating for them a competitive disadvantage compared to those who made such investment.

N.R. Dusting, Executive Vice-President of Council of Forest Industries of British Columbia to R.A. Williams Minister of Lands, Forests and Water Resources, 26 March 1974, Task Force Papers, Box 4, File 3.

42k. D.N. Manning, Director of Norman Manning Limited Forest Products, argues that the forest land tax implies that the licensee has some form of equity in the cutting rights, the land and the timber.

We submit that the levy of the forest land tax infers that the Licence has some form of equity in the cutting rights, the land and the timber. We also submit that the levy of the logging tax against the profit realized by the vendor at the time of sale of transfer of an Early Tenure infers that he held some equity in that tenure. We also submit that, because land rental and forest protection tax are levied against modern tenures (Cutting Permits and Timber Sales) and that these costs are recognized the overhead cost allowance section of the stumpage appraisal section of the stumpage appraisal for the term of that tenure, then also the land rentals and forest protection taxes paid by the Licensee of an Early Tenure must also be recognized in the overhead cost allowance section of the proposed royalty appraisal for the term of the tenure.

D.N. Manning, Director of Norman Manning Limited Forest Products, to Peter H. Pearse, 29 March 1974, p. 1. Task Force Papers, Box 4, File 3.

42l. D.N. Manning contends that Old Temporary Tenures have been bought and sold in the manner of real property with tacit the approval of Government, Banks and the Courts.

Over the years, we have observed that the transfer and conveyancing of these Early Tenures has been in the manner of real property, and with the approval of the Minister of Lands, Forests and Water Resources as evidenced by the signature of the Deputy Minister. Further, we have experienced that the possession of the title to an Early Tenure was treated by established and reputable financial institutions (including Chartered banks) and by the courts as a from of asset with tangible value. This has been with the knowledge of the government and, with this uncontested approval, has thereby recognized the inferred equity of the Licensee. Any substantial change in the policies and royalties concerning the Early Tenures would adversely affect the financing and viable future of our Licences.

D.N. Manning Director of Norman Manning Limited Forest Products to Dr. P.H. Pearse, March 29, 1974 p. 2-3 Task Force Papers, Box 4, File 3.

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Excerpts from briefs submitted to the Royal Commission on Forest Resources:

43a. MacMillan Bloedel outline the problems associated with the recommendations of the Task Force on Crown Timber Disposal.

It is impossible to discuss rentals and taxes on [old temporary] tenures without also discussing royalties. The economic impact is inter-related, in that the holder can stand higher royalties if his taxes are reduced, and vice versa. The obvious difference is that royalty is only paid once when the timber is cut and the holder has cash in hand to pay it. Taxes accrue every year, thick or thin, and can create a cash flow problem, which is aggravated if the owner is conserving his timber. The inter-relationship was recognized in the First Report of the Task Force on Crown Timber Disposal, February, 1974, which recommended that the forest land tax be abolished, that the logging tax be reduced, that rentals remain the same and that royalty be equated to full stumpage.

We challenge this recommendation for several reasons. Firstly, it would impose a substantial additional burden on industry, estimated by the Task Force at $15 million annually; our own estimate is higher. We trust that we have proved...that the forest industry's rate of return is so inadequate that it cannot be expected to pick up any additional burden of providing revenue to the Province.

Secondly, the change would alter the long-standing relationship between royalty and stumpage which Chief Justice Sloan recommended should be preserved. "[I]n our view it is clearly confiscation of the equity which the owner has built up in the timber. As well, the logging priority for each tenure would have to be re-examined in the light of the new conditions. Removal of the forest land tax is an incentive to hold these tenures for a longer period and the substantial increase in royalty is an incentive to log only when stumpage is low, and a disincentive to such beneficial practices as retaining these old tenures for winter logging.

The imposition of stumpage in the place of royalty also fails to recognize the unique situation in TFLs whereby the licensee must protect, reforest and manage the new crop at his own expense, and will pay full stumpage on that crop when harvested."

"Brief submitted to The Royal Commission on Forest Resources, Vancouver November 1975 by MacMillan Bloedel Limited," pp. 100-101. Ministry of Forests Library. Hereinafter cited as M & B Brief 1975.

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43b. MacMillan Bloedel's recommendations regarding royalties:

[A] fixed relationship should be established between royalty and stumpage, so that royalty would be 20% of average Crown stumpage for the preceding five years.

[T]here has been an approximate and consistent relationship between royalty and stumpage, which takes into account, as it should, of the differences between timber held under a Timber Licence and timber held under a Timber Sale. For the former the owner paid a sum, which was substantial in those days to obtain the grant and has paid renewal fees, rental and taxes. The Crown has had the use of this money and the holder has had no benefit if he has not cut the timber. These considerations do not apply to a Timber Sale.

The best authority on the proper relationship between royalty and stumpage is Chief Justice Sloan. [T]he Task Force ...also considered this question, but...came to the conclusion that the relationship should be one to one, if other changes were made. Our assumption is that these changes will not be made and we, therefore, must find a realistic relationship, which takes into account the investment position of the industry. [Brief then quotes Sloan Commission, 1956, pp. 450--452 in full.]

The ups and downs referred to by the Chief Justice are well illustrated by the relationship between royalty and stumpage over the last five years.... It would have been easy to argue in 1972 or 1973 that royalty was too low; however, in 1975 it is almost equal to stumpage and today it could be argued that it is too high.

M & B Brief, 1975, pp.102-106.

43c. Canadian Forest Product's recommendations regarding royalties:

Crown-grant land has been recognized as a fee-simple type of tenure involving minimal royalty rates for over 60 years. This historical precedent has been reflected in the purchase price paid by many holders, including ourselves. In these circumstances we believe that the royalty rates should not be increased.

"Submission to the Royal Commission on Forest Resources by Canadian Forest Products Limited and affiliated companies Vancouver, November 1975," p. 52. Ministry of Forests Library.

43d. Pacific Logging Company argues that royalties should be eliminated.

The charges and risks involved in the purchase and holding of private timber until harvest have been unduly burdensome and have, to a large degree, been responsible for the rapid rate of harvesting. These charges and risks include:

(a) Initial purchase price was paid in full over a short period of time (normally 3 years), whereas Crown timber was paid for as cut and scaled

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(b) Esquimalt & Nanaimo Railway Company land pays 25% tax (where applicable)
(c) Timber loss by fire or other agency meant loss of the capital value of the timber inventory. This is high risk.
(d) Repeated ad valorem property taxes on timber land bearing merchantable timber
(e) Repeated ad valorem taxes on immature forest situated on Wild Land

When considering property taxation in B.C. one is inevitably struck by the very small proportion of the total land area which is included in the Assessment and Taxation rolls. In other words, a very small assessment and taxation base is trying to satisfy an impossibly large and increasing revenue requirement. If Railway Grants had not been made during the early development of the Province this base would be considerably smaller.

All royalties on freehold timber should be discontinued after payment is completed on timber over 100 years in age. Managed private forests cannot carry the burden of property taxes, royalty and risk of crop loss prior to harvesting.

"Submission to The Royal Commission on Forest Resources by Pacific Logging Company Limited November 4, 1975, Victoria," pp. 41-43 and 46. Ministry of Forests Library.

43e. Tahsis Company Limited argues timber licences (therefore royalties) must remain unchanged if they are to maintain jobs when world markets are depressed.

The timber licences are one of the most important tenures held by our Company to provide a source of guaranteed raw material supply at a known cost. Moderate royalty rates have contributed considerably to the attractiveness of these tenures. In years of depressed world markets, we have been able to continue logging and manufacturing of lumber based on logs carrying royalty and no stumpage. This has been a major factor in sustaining employment in our sawmills and logging camps. Tahsis Company is opposed to any amendment to these timber licences and would like to point out that at the moment in the current depressed market, stumpage rates on Crown timber (although at minimum rates) are four times higher than royalty on the timber licences. This makes the difference as to whether we can provide employment.

"Brief submitted to the Royal Commission on Forestry British Columbia by Tahsis Company Limited, November 1975," pp. 9-10. Ministry of Forests Library.

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Excerpts from the final report of the Royal Commission on Forest Resources:

44a. The 1976 Royal Commission has very limited terms of reference in regards to royalties.

The terms of reference of this royal commission excluded inquiring into and formulating recommendations on "the royalties payable by the holders of Timber Leases and Licences, Pulp Leases and Licences, and Timber Berths, and excluding the general form of the stumpage appraisal system....

Timber Rights and Forest Policy: Report of the Royal Commission on Forest Resources, Peter H. Pearse Commissioner (Victoria: Queen's Printer 1976), p. xi. Hereinafter cited as *Pearse Commission, 1976*.

44b. Dr. Pearse identifies the problems associated with royalties charged on timber on Crown-granted lands.

The revenue these royalties generate is small, and threatens to be overtaken by the costs of scaling and collection.

Not only are the revenues small in relation to the cost of collection, but they are offset to a greater or lesser extent in property tax assessments. Every dollar of royalty liability reduces the property tax assessor's estimate of the value of the timber on these lands. I suspect the implications of this have not been fully appreciated.... Analysis of these property tax savings on individual parcels reveals that they accumulate in the last few years prior to harvest a large fraction of the royalty payable. In some circumstances the accumulated saving can exceed the royalty itself, which leads to the somewhat paradoxical result that when owners carry timber over many years they enjoy a fiscal advantage if it is subject to royalty, and that the total government revenues are reduced by the royalty levies.

Pearse Commission, 1976, p. 161.

44c. Dr. Pearse's recommendations regarding royalties on Crown-granted lands:

[Pearse concludes] that the public interest will be best served by abolishing royalty ability on Crown-granted lands altogether. It has obviously become an exceedingly inefficient method of collecting public revenue, particularly insofar as the revenue is offset in other payments to the Crown.. These deficiencies might be tolerable if the royalties served a special and unique function in the revenue system, but they are now a very minor item in provincial revenues that reduce the tax base of other levels of government that have much narrower options for raising funds.

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Pearse Commission, 1976, p. 161.

[Pearse rejects the idea of increasing royalties because such changes would require legislative action to, in effect,] expropriate part of the property right of the landowner.

Pearse Commission, 1976, p. 161.

[T]he abolition of royalties on Crown-granted lands will not only eliminate the costs associated with their collection but their yield will be recouped in part through higher property tax.

Pearse Commission, 1976, p. 161.

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45a. Royalties from privately owned timberland have recently been eliminated. Hon. Mr. Thomas Manville Waterland in response to a question from MLA Frank Howard:
"Royalties from privately owned timberland were eliminated. That was part of the total package put together in devising the new Forest Act. Royalties on private forest land were a very minimal figure anyway. The amounts received were not sufficient to pay for the cost of collection."

Province of British Columbia, Official Report of the Legislative Assembly (Hansard),16 July 1979. Hon. Mr. Thomas Manville Waterland in response to a question from MLA Frank Howard.

1987

46a. Minister of Forests, Mr. Dave Parker, announces that changes to royalties and rentals will soon be enacted
"While stumpage is the largest contributor to direct forest revenue, rentals on various forest tenures and royalties charged on timber licences are also significant. Section 11, 14 and 15 of the Forest Amendment Act will allow us to take action on rentals and royalties as part of a balanced package of revenue measures. Changes regarding rentals and revenues will be announced in the near future."

Province of British Columbia, Official Report of the Legislative Assembly (Hansard), 13 July 1987, p. 2425.

1989

47a. Stumpage and Royalty Rate Comparison for the Vancouver Region*

YEAR SPECIES	VOLUME	STUMPAGE RATE	ROYALTY RATE	ROYALTY AS A % OF GROSS STUMPAGE
1979				
BALSAM	2737369	6.27	1.20	19%
CEDAR	3396731	18.34	1.50	8%
FIR	1488106	13.63	2.00	15%
HEMLOCK	4955719	4.75	1.20	25%
1980				
BALSAM	3050030	11.82	1.20	10%
CEDAR	2984187	10.86	1.50	14%
FIR	1569932	15.34	2.00	13%
HEMLOCK	5247487	11.34	1.20	10%
1981				
BALSAM	1730002	3.42	1.20	35%
CEDAR	2111286	3.56	1.50	42%
FIR	1332703	6.03	2.00	33%
HEMLOCK	3576921	3.32	1.20	36%
1982				
BALSAM	1878238	3.03	1.20	40%
CEDAR	2372167	3.62	1.50	41%
FIR	1092362	4.97	2.00	40%
HEMLOCK	4189999	2.81	1.20	43%
1983				
BALSAM	3070177	2.93	1.20	41%
CEDAR	3147089	6.80	1.50	22%
FIR	1522317	4.41	2.00	45%
HEMLOCK	5823268	2.85	1.20	42%
1984				
BALSAM	2850324	2.54	1.20	47%
CEDAR	3229715	10.63	1.50	14%
FIR	1907023	4.74	2.00	42%
HEMLOCK	5509709	2.50	1.20	48%
1985				
BALSAM	2822511	2.95	1.20	41%
CEDAR	3906671	4.65	1.50	32%
FIR	2227309	6.52	2.00	31%
HEMLOCK	6376706	2.90	1.20	41%
1986				
BALSAM	2787853	3.05	1.20	39%
CEDAR	3931105	6.45	1.50	23%
FIR	2231256	8.47	2.00	24%
HEMLOCK	6209817	2.94	1.20	41%
1987				
BALSAM	3814899	4.84	1.20	25%
CEDAR	4774594	9.88	1.50	15%
FIR	2455431	9.78	2.00	20%
HEMLOCK	8128346	4.65	1.20	26%
1988				
BALSAM	3466878	8.61	4.80	56%
CEDAR	4639194	11.55	6.00	52%
FIR	2454348	9.05	8.00	88%
HEMLOCK	7604435	9.42	4.80	51%
1989				
BALSAM	3398203	9.36	4.80	51%
CEDAR	4138343	11.27	6.00	53%
FIR	1981044	10.59	8.00	76%
HEMLOCK	7109075	9.93	4.80	48%

*No adjustments have been made for Section 88 of the Forest Act.

1989

The range in percentage of royalty of gross stumpage between 1979 and 1989

BALSAM	10-35%
CEDAR	8-53%
FIR	13-88%
HEMLOCK	10-51%

Note: The volume of Cedar cut is usually twice that of Fir. Hemlock/Balsam make up two thirds of all volume.

John Cook, Senior Timber Pricing Forester, Valuation Branch of Ministry of Forests (September 1994).

1994

48a. Ministry of Forests creates a reproducible methodology for establishing royalty rates for each species.

Attempts by the Valuation Branch of the Ministry of Forests to ascertain the historical basis for the comparative levels of royalty rates by species were unsuccessful. In the absence of a clear rationale for why one species was charged a higher or lower royalty than another it became necessary to establish a new and reproducible methodology.

The values in the royalty rate schedule were adjusted with the objective of setting the average royalty rate at the original rate of $\$5.00/m^3$ plus an additional May 1, 1994 Target Rate adjustment of $\$10.81/m^3$ for the Coast and \$12.30/m3 for the Interior, or a Total Average Royalty Rate of $\$15.81/m^3$ for the Coast and $\$17.30/m^3$ for the Interior.

The methodology used in the May 20, 1994 Royalty Rate Schedule to distribute the average royalty rate to species rates is as follows:

1. Coast

Using 1993 historical timber licence volumes (77 percent South Coast, 23 percent North Coast) separate average royalty rates were calculated for the South Coast and the North Coast, assuming a $\$4.00/m^3$ transportation differential.

1994

South Coast Average Royalty Rate	$16.67/m^3
North Coast Average Royalty Rate	$12.97/m^3
Total Coast Average Royalty Rate	**$15.81/m^3**

(a) South Coast

Coastal Average Market Values (AMV) were summarized by species and grade for a three year period (1991-1993).

Historical billed royalty volumes were summarized by species and grade for a three year period (1991-1993).

Prorated AMVs for each species were then calculated.

Species values factors were calculated as each species AMV divided by all species AMV.

Species value factors were multiplied by $16.67/m^3 to give species average royalty rates for the South Coast.

Each species average royalty rate was then adjusted upward for the historic portion of Y Grade from that species billed at $0.25/m^3 (in order to collect a species average royalty rate, sawlogs must pay more.)

These final species royalty rates were rounded and entered into the revised Royalty Rate Schedule.

(b) North Coast

The same process was used to generate revised royalty rates for the North Coast.

The major difference is that the average royalty rate for the North Coast will be proportionally lower by volume than the average royalty rate for the South Coast based on the $4.00/m^3 transportation differential between the two regions.

2. Interior

A similar calculation was made for the interior, at an average royalty rate of $17.30/m^3.

Log volumes by species, and lumber values by species, were used in these calculations.

1994

The adjustments for $\$0.25/m^3$ grades were based on all species average, rather than being species specific as in the Coast calculations due to disproportionate levels of low grade on a species level.

John Cook, Senior Timber Pricing Forester, Valuation Branch of Ministry of Forests (September 1994).

APPENDIX B

The Establishment of the Various Forms of Royalty Bearing Tenures

Timber royalties apply to a variety of Old Temporary Tenures and Crown grants. These tenures were created to fulfill a variety of different policy objectives in differing time periods.[1] Sloan, in his 1956 report, states that the present pattern of "Crown ownership was the consequential result and not the design of pioneering policies." Both successive administrations and Royal Commissions alike have lamented this increasing complexity in tenure arrangements. In 1910, Fulton stated that the "holders of timber land should receive as far as possible equal treatment at the hand of the Government" and made a variety of recommendations toward that end. Forty-five years later Sloan states that "uniformity of tenure has not been achieved; in fact there are probably more varieties now than then."[2]

In 1994, a complexity still remains. It is the objective of this Appendix to document how the various forms of royalty bearing tenures came into being. This Appendix does not give a history of these tenures up to the present. Such an accounting would be lengthy and of limited use to the intended audience of this paper.

Leases

In 1879, the first timber royalty was levied on unalienated Crown land. The rate was 50 cents per Mfbm and was to be levied on all leases granted after 1879 (leases were first granted in 1870).[3] In 1888, the Land Act clarified the regulations surrounding leases by limiting them to a term of 30 years and fixing rental at 10 cents per acre and royalty at 50 cents per Mfbm. It was required that the lessee operate a sawmill with a 12-hour capacity of 1 Mfbm for each 400 acres under lease.[4]

In 1895, the regulations surrounding licences were changed dramatically when it became possible for people other than mill operators to obtain leases. This in essence allowed for the speculative holding of timber. The arrangement was so popular that by 1901 more timber had been staked than could possibly be cut in the next 20 years. In response, the Government made the leases perpetually renewable. The rationale given by the government of the day was that it would promote orderly utilization and prevent the destructive practice of highgrading for fast returns just prior to the expiration of the lease.[5]

Between 1901 and 1903 Pulp Leases were granted . These renewable 21 year leases were subject to rentals of 2 cents per acre and to a royalty of not more than 25

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[1]Appendix A, 36b., p. 55.
[2]Appendix A, 36a., p. 54.
[3]Appendix A, 7a., p. 18.
[4]Appendix A, 9c., p. 19.
[5]Appendix A, 12a., p. 21.

cents per cord of pulpwood.[6] In 1905, the McBride government discontinued granting of all leases in favor of a new tenure called the Special Timber Licence.

Licences

The right to cut timber under licence was first established in 1888. Originally, the licence was for one year and nontransferable, costing 50 dollars and subject to a royalty of 50 cents per Mfbm. A person was only allowed to hold one licence at a time. In 1905, the granting of these licences was stopped in favor of granting two year renewable and transferable Special Timber Licences. To obtain such a licence, a licensee staked out a licence of up to mile square and published a description of its location in the British Columbia Gazette. The licence was then subject to an annual rental and to the current royalty rate. There were no limits on the number of licences one person could hold. When the staking of these licence was halted at the end of 1907, more than 15,000 licences covering some 14,000 miles had been taken up. Most of these were on the coast and included the bulk of the remaining prime timber.[7]

The Government created Special Licences because it felt it was not getting a fair return for its timber. The Province was starved for revenue and looked to this new licence as a way of raising capital to invigorate the economy.[8] The Fulton Report described the creation of the Special Timber Licence as "the adoption of an entirely new principle in forest policy."[9]

Crown Granted Lands

On April 7, 1887, the Provincial Land Act was amended in the hopes of stopping the alienation of Crown lands that were rich in timber. It required the purchasers to make a declaration that the lands they were purchasing were "not chiefly valuable for timber." It also reserved all timber on these so called "patented lands" for the Crown. To cut timber on patented land, the owner had to obtain a licence and pay a royalty of 25 cents per Mfbm. In 1888, the granting of patented lands was stopped and the need to obtain licences to cut timber on these lands was revoked in 1903. From 1888 onwards, instead of reserving the timber as it had on the patented lands, the Crown reserved a royalty on all timber cut upon crown lands granted after April 7, 1888.[10]

In 1896, the timberlands were officially defined as all lands carrying 8,000 feet to the acre west of the Cascades and 5,000 acres east of the Cascades. From this year forward all lands so defined would be reserved from sale. By 1914, the policy of

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[6] Appendix A, 15a., p. 22.

[7] Appendix A, 17a., p. 23.

[8] Sloan Commission, 1956, pp. 29-30 (not recorded in Appendix A).

[9] Appendix A, 20e., p. 30.

[10] Appendix A, 8a., p. 18.

non-alienation of title to forest lands was a well-established feature of provincial land policy. By this time, lands were being granted ostensibly for purposes of agriculture and settlement, with forest values considered incidental at the time. The royalty rates to be collected on these lands were first set out in a detailed schedule in the 1914 Forest Act.[11]

Another form of Crown grants were railway grants. In 1901, the Railway *Lands Timber Royalty Act clarified the status of Crown railway grants in relation* to royalty by stating that timber royalty was not a tax, and that the tax exemption privileges in several railway land grants did not preclude them from the payment of royalty. This Act did not, however, apply to the Esquimalt and Nanaimo Railway lands.[12]

In 1930, the mainland Railway Belt that the Province conveyed to the Dominion in aid of railway construction was reconveyed back. The Dominion had granted timber harvesting rights in the form of Timber Berths in the Railway Belt, and these were inherited by the Province and became another form of old temporary tenures subject to royalty.[13]

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[11]Appendix A, 13a., p. 21.
[12]Appendix A, 15c., p. 22.
[13]Appendix A, 6a., p. 18.